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2874

SELECT COMMITTEE ON LABOUR RELATIONS ACT

Vol. 1

Monday, June 24, 1957.

*Topic*  
*Independent Contractors PP 133-8*

*Daley - 9, acceptance of union*  
*11 - Act on balance ?*  
*12 - Is improved ?*

*IDIA - 20-6*

*Dev. 1 - 28 -*  
*Rq - PC 2685 p. 31-4 (10/10/53)*  
*Heenan Bill 39*  
*PC 1003- 52 -*









ANGUS, STONEHOUSE & COMPANY  
TORONTO, ONTARIO

LEGISLATIVE ASSEMBLY OF ONTARIO

SELECT COMMITTEE ON LABOUR RELATIONS

Committee Room No. 1, Parliament Buildings  
Queen's Park  
Toronto, Ontario

Monday,  
June 24, 1957.

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JAMES A. MALONEY

Chairman

HAROLD PERKINS

Secretary

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MEMBERS PRESENT:

G. E. Jackson  
Robert Macaulay  
Donald C. Macdonald  
Ellis P. Morningstar  
Raymond M. Myers  
Arthur J. Reaume  
H. Leslie Rowntree  
J. W. Spooner  
Albert Wren  
John Yaremko

APPEARANCES:

Hon. Chas Daley

Minister of Labour

Mr. J. B. Metzler

Deputy Minister of  
Labour

Mr. Louis Fine

Chief Conciliation  
Officer

Mr. J. Finkelman

Chairman, Labour  
Relations Board

Mr. H. A. Logan









THE CHAIRMAN: Gentlemen, we will now call this meeting to order. We now have a quorum and you all have received notice as of the 12th of June advising the items suggested that the meeting of the committee on the 17th of April constitutes the agenda on this meeting. Before we start with that, there has been an inquiry received by the Secretary from several people and agencies who are anxious to obtain a copy of the record of the proceedings taken here. I have spoken to Mr. Lewis about the procedure that is involved and I think he has some advice to offer as to what should be done in connection with anyone who wants to obtain a copy of the record here.

MR. LEWIS: Mr. Chairman, of course this is a question for the Committee. In fact there are two questions involved. The Committee should decide whether it wishes public distribution of the Hansard or not, and if they decide that public distribution is desirable then they must decide how it is to be handled. My own feeling in the matter is, if it is decided to allow public distribution, then I can see no reason why the Secretary should be burdened with those additional responsibilities. I would suggest for the consideration of the Committee that perhaps the simplest way would be to advise such persons that they can subscribe direct to Angus, Stonehouse Company Limited.

THE CHAIRMAN: We have a contract with







Angus, Stonehouse Company Limited for a certain number of copies and anyone who wants to obtain a copy would have to negotiate with them.

MR. WREN: Mr. Chairman, I would move that a record be made available to the public on application to that firm.

THE CHAIRMAN: Would someone care to second the motion?

MR. ROWNTREE: I second that motion.

THE CHAIRMAN: Moved by Mr. Wren, seconded by Mr. Rowntree that the record be made available to anyone desiring to obtain same.

MR. MACDONALD: Before we vote on that, does that leave the fixing of the charge completely out of our hands? It is possible the price could be so prohibitive as to exclude many people who want to subscribe for it.

THE CHAIRMAN: I understand from the reporter the likely charge would be 10 cents a page.

MR. MORNINGSTAR: Do not the people who want it pay for it themselves?

THE CHAIRMAN: Oh, yes.

MR. MACDONALD: I realize that. All I am saying, it is one thing to vote on the principle of making it available to the public and another thing to ignore the fact that this might go on and cost \$300 or \$1,000, which it might well do. In terms of pages, 10 cents a page is going to cost







\$10 or \$15 a day.

THE CHAIRMAN: Well, we cannot very well fix the price for the Stonehouse people; we have no control over that. We have a contract with them for ourselves for twenty copies and they will be furnished to us at a certain price. Now, anyone desirous of obtaining a copy of the record, if we agree that the record should be made available to the public, would have to make their own arrangement with Angus, Stonehouse Company Limited. We cannot fix the price that they would charge the public.

MR. YAREMKO: I am trying to recall the quotation that we received from Angus, Stonehouse. Was it not based on a breakdown of the costs, so much for the reporter and the rest for the cost of reproduction?

MR. LEWIS: My recollection is, without having the correspondence before me, that it was so much a stencil, \$1.85 a stencil, I believe, and rather a nominal charge for the twenty copies. The cost for the stencil was to include reporting, etc.

MR. MACDONALD: The point I am making is, the thinking of the Committee is -- sometimes you have fifty and sixty pages of transcript for the day, and that simply means if they want the day's transcript, any person outside the Committee who wants a copy of it, is going to pay \$5 a day. We are going to meet conceivably fifty to one hundred days before







this Committee is over, and that is \$500 to \$1000. It is a meaningless gesture to say we are going to make this available to the public if it is going to cost that to get it.

MR. MYERS: Could not a copy be available at the office of the Secretary or the public libraries or something of that sort for anyone who wanted to see the record?

THE CHAIRMAN: We will have additional copies, but only nine more than are on the Committee.

MR. MACAULAY: Well, what is the alternative? Can we not file them at the library? What is the alternative of my friend's suggestion; is he suggesting the Government should print one hundred extra copies at \$1000 apiece and have them sent around? What is the alternative?

MR. MACDONALD: The Committee feels it is available to fifty or one hundred key people in unions and management and different other bodies across the province. They want this available, and make it available at a price that is a fair price, and I suggest the cost of doing that is going to be a very small proportion of the cost of this Committee.

MR. SPOONER: Could it not be printed the same way as Hansard in the House?

THE CHAIRMAN: I understand it would be much more expensive.

MR. MACAULAY: To save some time, could we







set up a three-man subcommittee to report to this Committee as a whole tomorrow morning? I assume we are going to sit more than today.

THE CHAIRMAN: If it is necessary we will sit the rest of the week.

MR. MACAULAY: There is no point in taking everybody's time with this point if a few people could see what this could be resolved into. I would move in any event, if it is possible to have Mr. Wren, Mr. Macdonald and Mr. Yaremko on a subcommittee of three to decide what can be done to make public the necessary copies of the proceedings of this Committee and to report back tomorrow morning.

MR. JACKSON: I second that.

THE CHAIRMAN: Moved by Mr. Macaulay, seconded by Mr. Jackson, that a committee of Mr. Macdonald, Mr. Yaremko and Mr. Wren be appointed to look into the making of this record available to the public and to report back to this Committee tomorrow morning. Any discussion? All in favour? Carried.

Now then, gentlemen, we have with us this morning the officials of the Department of Labour, and I think at the outset we would be pleased to have a statement from the Minister of Labour, Mr. Daley, if it is the pleasure of the Committee.

HON. MR. DALEY: Mr. Chairman, members of the Committee, ladies and gentlemen: I appreciate having the opportunity to just say a few things at







this, now the second meeting, of this Labour Committee. I assure you I am not going to be very long, but there are a few things I would like to draw to your attention.

As many of you are aware, I was appointed Minister of Labour back in 1943 and have held that office continually since that time. At that time we had in existence what was then known as the Labour Court. This Court was presided over by judges and Professor Finkelman was the Registrar of that Court. After some brief period of time it was deemed advisable by the Government on representations from both organized labour and management that the Court, while fulfilling a very useful purpose, was not the answer that was desired. The Government decided to dissolve the Court and establish a Labour Relations Board. Objections to the Court at that time were that it was too judicial in character, that organized labour could not present their cases in their own language before a court of that calibre. It was decided to make that change and the Court was dissolved, as I have said, and the Labour Relations Board established.

The Labour Relations Board personnel was composed of representatives of organized labour and representatives of management with an impartial chairman. Over the years the personnel of this Board has changed from time to time, sometimes unfortunately because of







death or for other reasons, but we have been very fortunate in having a very high type of personnel administer this Labour Relations Board. We also have had a reasonable continuity of the services. Some of our members have been on the Board for a very long time, which is a very desirable thing in a Board of that kind.

Professor Finkelman, with the exception of a short interval when he resumed teaching at the university, has been continually with the Board. I would say here, and I think that labour and management will agree, that Professor Finkelman is a man who has had great experience. As a matter of fact, I do not think there is any man on this continent who has had more experience, has a better knowledge and understanding of labour relations problems with all their implications, their effect on the industrial life both from a workers' and management point of view than the professor.

I am going to stop there and just say that if and when any request is made from this Committee that the professor will be available to explain the workings of the Labour Relations Board, its objects and how it goes about accomplishing them.

In Ontario -- and I want you in your deliberations to remember that we have had a terrifically expanding industry. It has been expanding at an unbelievable rate, I believe fifty per cent or





more by reason of the industrial activity of Canada. Statistics, I believe, will disclose that the record has been good, and I would say, considering the great industrial expansion and the ever-increasing tempo of labour organization, that the activities of the Board in the administration of the Labour Relations Act have been excellent because in that time we have had a continuous, gradual improvement in the standard of living.

In the early days in this era, starting as of 1943, there was on the part of management some fear, hesitation, in accepting organization into their plants. In some cases this resistance was quite emphatic against the organization, but without going into it in any detail at this time I would say that that feeling is almost entirely gone and that today there is better understanding and mutual goodwill as between management and labour than was ever even dreamed of in the early days. Of course, the unions' obligation to the workers is to get the best paying, the best conditions of employment, the greatest security that can be obtained. The industry desirous of having the organization has to decide how far they can go, bearing in mind the ability of the public to pay and absorb the goods they make and must sell and at a price that will encourage sales and yet remain competitive in their field. So, you have differences of opinion between management and labour that sometimes







leads to serious trouble. However, I think it is safe to say that the Labour Relations Act with its regulations, its Labour Relations Board and its conciliation services has had a very salutary effect in this province. I believe there is no place of equal industrial growth that has had less industrial disruption than here in Ontario.

Conciliation is under Mr. Fine, who is recognized as one of Canada's outstanding conciliators, with a record of achievement behind him. He will at your request explain the process and the activities of the Conciliation Board over which he is the head.

The Labour Relations Board, which is only a small part of the Department of Labour, has been and I presume always will be, from an administrative point of view more or less contentious. It is not like endeavouring to find a better way to administer the forests or the fish and game laws of this province, important as they are, because it deals with human beings, their aims and objects, their natural desire to improve their standing. It actually deals with the bread and butter of the workers and on the other hand the policy of our industry to produce, to sell, to create jobs. Perfect conditions are no good if there are no jobs.

One of the problems which I believe is facing this Committee is to decide if the Act is in







balance, does it give unjustified protection to the workers or power to the workers, or to industry?

Is it weighted against either one or the other, does it leave too much or too little for the bargaining table, for, after all, ladies and gentlemen, disputes are settled at the bargaining table, and that is ~~am~~ really the only place that they can be settled.

Over the years many briefs have been presented and submitted by both management and labour to myself as Minister of Labour. The way I have treated these over the years, these briefs, the thoughts of many, thoughts of many administrators and thoughts of other people that have been presented to me, has been to hold meetings with my deputy, with Mr. Finkelman, the Chairman of the Labour Relations Board, with Mr. Fine, the head of the Conciliation Services. We sit down regularly year after year, consult these briefs, weigh them, and, of course, in the final analysis have full discussion. I, because of my position, have had to make decisions, what amendments we would submit to the Legislature and what we would leave out. We have, of course, had to weigh the results of these proposed amendments from their overall picture, whether an amendment might eliminate some problem in administration and create others. In this way we have brought about amendments from time to time that have been submitted to the Legislature until today I believe we have a practical, a workable and reasonable





piece of legislation generally accepted as being sound.

Can it be improved? That is for you, the members of the committee, to decide, but I suggest only after the most searching scrutiny.

Here is an interesting thing: a man came into my office a few months ago. He was from another country and he had been delegated by his government to examine into labour legislation. He had been in the United States, he had been in England, and he was eight months on this job. He spent several days with Mr. Fine and several days with the professor at the sittings of the Board, and he came and advised me that after all his investigation he was going to recommend to his government that the Labour Relations Act of the Province of Ontario was the most workable for his country.

Labour relations, as I have already said, is contentious and I would suggest that while many suggestions are made, that laws should be included that we curb this activity or that activity, we must always bear in mind that labour is a legal organization, that it has its constitution, that its internal workings are its own affairs and I do not believe in propounding or developing legislation that curbs activities as long as they are done within the field of the Labour Relations Act. It cannot be administered by policemen. You cannot throw people into jail because some untoward action has







taken place. Another thing, it cannot be too far ahead of public opinion for public opinion is the main thing on which legislation must stand, and to be workable it must have public opinion behind it. So, you can go and you can declare by legislation this act is illegal and that act illegal, but you must have the cooperation of management and labour to make it work.

We have endeavoured over the years to bring both parties into agreement and bring them along with us, and I think with a certain amount of success.

At the opening session it was suggested that comparisons as between our legislation and other provinces would be available, and we will have those comparisons to present to you when and if you desire them.

In conclusion, Mr. Chairman, I would say this to the Committee: I am anxious, as the administrator of this Department, to have in this province the best legislation possible, and I offer the fullest cooperation to this Committee of the Department, of the executives and anybody in the Department of Labour. They will all be available and will assist you in every way possible in your deliberations.

THE CHAIRMAN: Thank you very much, Mr. Daley. Now, gentlemen, I understand that you have each been furnished with a summary of the provisions







of the Labour Relations Act and also the antecedents of the Labour Relations Act. Has everyone received a copy of both those documents, the summary of the provisions of the Act and the antecedents of the Labour Relations Act? I presume that the first document, that is, the antecedents of the Labour Relations Act of 1950, is to comply with the historical background of labour relations in this province prior to the passing of the present Act. The summary of the provisions of the Labour Relations Act as it presently is enacted is contained in the second document that has been handed to you. We have available the Deputy Minister Mr. Metzler, Professor Finkelman and Mr. Fine, and I would leave it to the Committee to decide what method of approach we are to take at this aspect of the meeting. It must be understood, I think, that Professor Finkelman is considered to be the expert on the Labour Relations Board and Mr. Fine is a Conciliation Officer and head of the Conciliation Services, so in directing your questions, gentlemen, I would suggest that anything you have to ask concerning labour relations and the Act and the actions of the Board be directed to Professor Finkelman, and anything having to do with conciliation proceedings should be directed to Mr. Fine.

MR. MACAULAY: Mr. Chairman, am I right in assuming that everybody has read these antecedents





of the Labour Relations Act.

THE CHAIRMAN: I do not think you would be right.

MR. MACAULAY: With great respect, it strikes me as being necessary that we ought to go through that this morning and then go through the summary of the provisions, because I do not think we can intelligently discuss anything with these gentlemen until we have read those documents.

THE CHAIRMAN: No, I do not think it would be wise to proceed without going into the antecedents of the Act and the summary of the Act. Would you propose that we read it ourselves?

MR. MACAULAY: I would propose that it be presented by whoever wrote it, or if necessary you read it. You have an attractive sonorous voice.

THE CHAIRMAN: That is very kind of you. Well, gentlemen, with your permission ---

MR. MACAULAY: Perhaps the Committee does not think that is right.

MR. MYERS: Have someone give a summary of it.

MR. METZLER: Professor Logan is here with us. The antecedents represent a digest of the first portion of a book that he wrote on this subject, and this digest has been prepared in the Department with his knowledge and permission.







THE CHAIRMAN: Professor Logan, would you like to present the antecedents of the Labour Relations Act, 1950, to the members of the Committee?

MR. LOGAN: I think that your idea of reading it might be the best thing, Mr. Chairman, because after all you cannot shorten it down much further than it is.

MR. MACAULAY: It is already a digest, is it not?

MR. LOGAN: Pretty well.

THE CHAIRMAN: Well, with your permission I shall proceed to read this very interesting document:

"THE ANTECEDENTS OF THE LABOUR  
RELATIONS ACT, 1950

EARLY LEGISLATION

Provincial:

"Reflecting the simpler and more localized economic conditions, nineteenth century legislation affecting industrial relations was mostly provincial. State inquiry and interference in the 'eighties and 'nineties was a reaction, in some instances, to sweat-shop conditions and to low standards of safety from accidents but increasing attention was also turned to the problem of disputes. Statutory provision for intervention in disputes is found, for example, in the Trades Arbitration Act of Ontario in 1873, in the Nova Scotia Compulsory Arbitration Act of 1888, and in the





Trades Disputes Acts of British Columbia and Ontario in 1894 and of Quebec in 1901. Space forbids elaboration of these and other early provincial Acts. There seems to have been little in them that was original. Canadians seemingly copied British and Australian legislation -- a circumstance that led a Federal Royal Commission on Labour and Capital, reporting in 1889, to recommend that more attention be paid to American statutes and their administration as being more applicable to Canadian conditions . . .

"With the turn of the century, leadership in this field passed to the Federal Government, and Canadian legislation soon showed evidence of more originality in design and a maturer appreciation of the country's needs. Yet the provincial legislatures did participate in the improvement. Ontario's Railway and Municipal Board Act of 1906, for instance, carried many of the same features as the federal legislation of the period and provided, in addition, machinery for taking over and operating any railway where services were suspended - machinery which it twice used with effect. Over an eighteen-year period (1906-23) the Ontario Railway and Municipal Board intervened in five strikes of







street railway employees as compared with some fifty applications to the federal Department of Labour for boards of conciliation and investigation under the Industrial Disputes Investigation Act by street railway companies or their employees. This proportion indicates the larger dependence of public utilities upon the federal authority in this period, even among industries wholly within a single province . . .

Dominion peacetime legislation:

"The dominion government's formal contribution to peacetime labour relations before World War II involved the enactment and operation of the following legislation: The Trade Union Acts of the early 1870's, freeing the unions from charges of criminal conspiracy and, by implication, creating an area of legal picketing; the Conciliation Act of 1900; the Fair Wage Resolution, covering government employees only; The Railway Labour Disputes Act of 1903; and the Industrial Disputes Investigation Act of 1907 with its later amendments. None of these, unless it be the first, was directed especially towards collective bargaining. With one exception, these early twentieth-century statutes were concerned with the settlement of disputes per se leading, or threatening to lead, to stoppages.





"The Conciliation Act of 1900 was patterned on the British Act of the same name of 1896. It contained no compulsory features but merely provided free conciliation by individuals or boards, chosen by the disputants themselves, upon request of both parties. It provided, also, for registration of boards so created, for the establishment of a Department of Labour to collect and digest statistics relating to labour matters and to publish a monthly Labour Gazette. The Railway Labour Disputes Act, whose passage through Parliament took two years and whose content changed in the process from a prescription for democratically administered compulsory arbitration to something much milder, became law in 1903. After a very limited functioning, it was consolidated with the Conciliation Act in 1906, and subsequently the railway field was covered by the Industrial Disputes Investigation Act with its more varied weapons of control and its wider jurisdiction. The chief significance of the Railway Labour Disputes Act for us today lies in the fact that it was a stepping stone on the way to the Industrial Disputes Investigation Act, and that its changing prescriptions during its slow passage through Parliament reveal the groping trial and error in the thinking of the legislators of that period . . .







"The Industrial Disputes Investigation Act of 1907 provided compulsory investigation by government-appointed boards into labour disputes of certain types of industry. It prohibited a stoppage of work pending investigation. By amendment, it required both employers and employees to give thirty days' notice of an intended change in wages and hours, and if such notice caused a dispute, neither party could alter the conditions until the dispute had been dealt with by a board. The Act relied on the effect of public opinion, which would be informed of the stand of the parties in dispute and of the published recommendation of the board, to help settle the controversy with justice to both parties. The Act had compulsory application only to coal mining, transport, and communication agencies, and to gas, electric, water, and power works. Its machinery could be applied, however, to any dispute in other industries if both parties to the dispute consented, and in the early 'twenties it was turned increasingly to this use . . .

"The main features of the Industrial Disputes Investigation Act were: (1) compulsory provisions for the industries assumed to be under dominion jurisdiction and designated as affecting the public interest; (2) the





representative principle in administration through a government-appointed ad hoc board of three, including a nominee by each party to the dispute and an independent chairman; (3) dependence upon public opinion through (a) publication of the report of the investigation of the dispute and the board's recommendations thereon and (b) permission, at the discretion of the board, to the press to be present at the board's hearings; (4) conciliation operating through the agency of board members and affected by publicity; (5) 'cooling-off period' of defined length enjoyed or endured by the disputants who had been made cognizant of the facts revealed through investigation, and whose attitudes had been somewhat affected by the conciliators. With experience and the passage of time there is said to have developed (a) less dependence upon publicity and a greater reliance upon conciliation; and (b) a tendency, with the growth of organized unions, to permanent disagreement among the board members and the issuance of minority and majority reports.

" . . . This Act was operative over a period of forty years and . . . many of its terms are incorporated in present legislation . . .

"The constitutional validity of (the Industrial Disputes Investigation Act) . . . was







questioned in 1911 when the Montreal Street Railway Company challenged the power of the dominion parliament to enact such a statute; but a Quebec Superior Court upheld its validity on the ground that the subject-matter had a general or national importance and was connected with the peace, order and good government of Canada. In 1917, however, when the City of Edmonton applied for an order to restrain a board from inquiring into a dispute with its street railway employees, the dominion wauthorities did not oppose the injunction and no inquiry was made. In fact, it was officially stated later that in these years the practice of the Labour Minister was to establish a board in a dispute involving municipal utilities only 'in the absence of a distinct protest by the municipality on the ground of jurisdiction.' But in 1923 a board was established in a case involving the Toronto Electric Commissioners, a municipal body. A restraining order applied for by the Commissioners was granted and the question of the validity of the Act was before the Courts.

"The Ontario Court of Appeal upheld the Act maintaining that it provided machinery for inquiry into disputes "which may, and in other cases will, develop into disputes affecting





not merely the immediate parties thereto, but the national welfare, peace, order and safety and the national trade and business . . . ' It declared, furthermore, that 'the legislation is not law in relation to municipal institutions, local works, property and civil rights or matters purely local as these words are used in the British North America Act.' In January 1925 the Judicial Committee of the Privy Council in a famous judgment read by Viscount Haldane reversed this decision declaring that the Act was one 'primarily affecting property and civil rights,' a subject reserved to the provincial legislatures, and that most of its clauses 'could have been passed, so far as any province was concerned, by the provincial legislature under the power conferred by section 92' . . .

"Following this adverse decision of the Privy Council, the Industrial Disputes Investigation Act was amended to restrict its application to: (i) 'any dispute in relation to employment upon or in connection with any work, undertaking or business which is within the legislative authority of the Parliament of Canada' and there follows an enumeration; (ii) 'any dispute which is not within the exclusive legislative jurisdiction of any provincial legislature . . .'; (iii) 'any







dispute which the Governor in Council may by reason of any real or apprehended emergency declare to be subject to the provisions of this Act'; (iv) 'any dispute which is within the exclusive legislative jurisdiction of any province and which by the legislation of the province is made subject to the provisions of this Act.' This last clause was the significant one. It opened the way for expansion of the federal power through legislative action in the provinces to delegate authority to the Dominion. Within a year British Columbia, Saskatchewan, Manitoba, and Nova Scotia passed such legislation, while Alberta passed an IDI Act of its own on the federal model. Ontario and Quebec passed accommodating Acts in 1932. In this way it was thought that the problem arising out of the Privy Council decision had been overcome and the necessary flexibility achieved.

"The records of the Department of Labour and statements published in The Labour Gazette show clearly that (contrary to some belief prevailing today) the powers granted to the federal government by this permissive legislation were used. During the later 1920's and the 1930's, for example, the provisions of the IDI Act were regularly invoked to deal with disputes involving coal mines and street





railways which, in the absence of the enabling legislation, would have been beyond the scope of the Act. Beyond these again, on a few occasions during this same period, boards of conciliation and investigation were established in accordance with the provisions of the Act to deal with disputes in works and undertakings that were outside both the normal boundaries of federal jurisdiction and the definition of 'employer' set forth in the Act. The latter was done, apparently, only with the consent of both parties to the dispute. There was, however, considerable opposition to this enabling legislation, at least on the part of employers, in the provinces which had enacted it. As a result, a considerable body of legal opinion, which held that such legislation was ultra vires of the provincial legislatures accumulated. In 1950 the Supreme Court of Canada, in an early use of its newly acquired high responsibility, upheld a decision of the Supreme Court of Nova Scotia in finding that a province cannot delegate the powers conferred upon it under the constitution to another political body of co-ordinate rank . . . Thus one more way of extending federal authority was blocked . . ."

MR. MACAULAY: What was the name of that case, Professor Logan?







THE CHAIRMAN: The 1950 Decision of the Supreme Court of Canada dealing with a Nova Scotia case.

MR. LOGAN: I do not believe I can give you the name offhand.

MR. METZLER: We will check it against the book.

THE CHAIRMAN: We will get that information.  
"Orders-in-Council in World War I:

"The Government rather tardily in World War I struck a pattern of labour relations control very similar to that of the earlier years of World War II . . . It involved (1) an extension of the IDI Act (March 1916) to cover industries producing war material for the duration, through making use of the war emergency power; (2) a declaration of principles (July 1918) naming, among other matters, the right to organize and to negotiate without discrimination, comparable to the famous P.C. 2685 of June 1940 for the guidance of employers and employees engaged in war production: this in the interest of fair and peaceful industrial relations and maintenance of war output; the 1918 Order differed, however, in that it provided for arbitration with final authority through use of a tripartite permanent Labour Board of Appeal, to





which either party to a dispute might appeal from decisions of the boards of conciliation investigating the disputes; (3) prohibition of strikes and lockouts for the duration of the war, ordered only one month before the end of the conflict; (4) the use of one-man commissions and of royal commissions in the investigation and settlement of disputes.

"Though attention to industrial relations was much less in World War I because of the smaller and less vitally necessary war industry and the comparatively inadequate organization of unions to challenge big industry, the pattern of control as developed in response to the stress at that time doubtless contributed to the quicker use of the same techniques in 1940 . . .

THE INDUSTRIAL RELATIONS SITUATION IN THE  
'TWENTIES AND 'THIRTIES

" . . . It is necessary to say something, very briefly, about the extent of union organization and the degree of union acceptance in the pre-war period. Collective bargaining during this time was limited chiefly to railways, building trades, printing, paper milling, coal mining, and clothing. It made little headway in manufacturing, in trucking, or in merchandising. Before 1933, in fact, the American Federation of Labour unionism came to a continent-





wide halt. Factors contributing to this were: (1) the 'open-shop drive' of the manufacturers; (2) the defeat of the great strikes after World War I in steel, coal, railway shops, and so on, which sapped the unions financially and undermined their confidence; (3) for Canada, in particular, the One Big Union secession movement in the West; and later (4) for both countries the welfare offerings of the big progressive employers. After 1933, with the assistance of a friendly government, labour organization increased rapidly in the United States, but the Canadian sections of the internationals were scarcely affected.

"The small coverage of trade union collective bargaining was also attributable to employee representation, which came to the front in Canada as well as in the United States, but which lasted longer in Canada. It functioned largely as a substitute for collective bargaining in such industries as steel, packing-house, and agricultural implements.

"For Canada this comparative failure of trade union organization was, after 1933, in marked contrast with great changes in the United States, made possible there by the National Recovery Administration and the Wagner Act, and spearheaded by the new unions then







laying the foundations of the Congress of Industrial Organizations. Collective bargaining, it is evident, and the way in which it was carried out, had become the central issues in industrial relations. Yet through all this period, the Industrial Disputes Investigation Act showed no positive stand toward collective-bargaining negotiation, and its boards, until 1940, had no legislative instruction with respect to discriminatory practices.

"The unions, in view of their successes in the United States under the Wagner Act, and especially after the declaration by the Supreme Court in 1937 of its constitutionality, exerted pressure on the provincial governments for legislation aiming to give like results in Canada. Nova Scotia, in April 1937, stimulated by problems related to the forceful action of the Steel Workers' Organizing Committee in the steel plant at Sydney, passed a Trade Union Act; Manitoba at the same time, and Quebec and British Columbia later in the year, followed suit; Saskatchewan, Alberta, and New Brunswick followed in 1938. These provincial statutes, however, while declaring against discrimination and generally supporting labour organization and collective bargaining, failed to provide administrative boards to certify the





organization acceptable to the workers, and consequently failed to enforce the law against non-recognition and other unfair practices. They were, therefore, spotty in their achievement and, for the most part, of little effect, though indirectly valuable in focusing the attention of legislators across the country on this great problem. In the Dominion Parliament, Mr. J. S. Woodsworth, after earlier failure, succeeded in 1939 in getting a . . . bill passed, outlawing discrimination by an employer against a worker, solely for the reason of his being a member of a trade union. This, too, although . . . embodied in the Criminal Code, was ineffectual because the condition in any particular case was practically incapable of proof.

#### EARLY ORDERS-IN-COUNCIL, WORLD WAR II

"This, then, was the situation at the declaration of war on September 10, 1939. On November 7, by Order-in-Council P.C. 3495, the Dominion government extended the Industrial Disputes Investigation Act to cover defence projects and all industries producing munitions and war supplies. On June 19, 1940, in P.C. 2685, it made a declaration of principles to govern the conduct of industrial relations during the war. Seeking the avoidance of industrial







strife and the utmost acceleration possible in the production of goods essential to war, P.C. 2685 recommended, inter alia, that fair and reasonable standards of wages and working conditions should be observed, that the right of workmen to organize in trade unions and to bargain collectively should be recognized, that disputes should be settled by negotiation or with the assistance of government conciliation services, and that collective agreements should provide machinery for adjusting grievances.

"This declaration of principles, while generous and comprehensive, was soon discovered to be no more than a set of recommendations. The government maintained that it was not intended to be coercive, but organized labour at first regarded it as such. In fact the Canadian Congress of Labour, in its memorandum to the Cabinet in the spring of 1941, pointed out 'that employers generally had disregarded the order,' and urged that it be implemented by legislation that would protect the right to organize and bargain collectively by providing penalties for infringement of that right. Furthermore, it employed legal counsel, in the person of Mr. J. L. Cohen, K.C., to draft proposals for a new order-in-council in line with its ideas and aiming specifically to check





employer discrimination and interference. This document which, among other things, called for the establishment of a Labour Policy Enforcement Board, for prescribed fines to be imposed on offending employers, and for compensation to be paid to victims of discrimination, was placed before the National Labour Supply Council and there discussed. This early expression of what labour had in mind is significant as a landmark anticipating the government's offering of three years later. The discussion that took place before the NLSC apparently suggested that immediate fulfilment of the request was unlikely. The Executive Board of the Congress was, therefore, led 'to recommend also an agency of more limited function, viz., an Industrial Disputes Enquiry Commission with power to investigate disputes and allegations of discrimination on account of union membership or activity, and where the Commission considered it desirable, to recommend the appointment of conciliation boards. This last advice the government followed: and thus came into being Order-in-Council P.C. 4020 on June 6, 1941, providing an investigation agency more speedy in action and in closer relation with the Labour Minister and his department than the ad hoc boards (of the IDI Act).' By this order, the Minister might





also refer to a commission any actual or threatened dispute which fell within the jurisdiction of the IDI Act as extended. Originally it provided for a standing commission of three members, but in July the Order was amended (P.C. 4844) to use one or more members appointed ad hoc by the Minister. At his direction, such commissions were in frequent use in alleged discriminatory discharge cases. (The Order also named alleged coercion or intimidation to induce joining unions as objects of investigation, but this phase was not operated.) Failing settlement, the commissioner would report his findings to the Minister who would issue a final and binding order to give effect to recommendations. Through this medium, a large number of dismissal cases were investigated during the war and, in many of them, reinstatement in employment with back pay for the period of wrongful dismissal was ordered. This direct relief to the employee, based on recommendations by commissioners, marked the beginning of compulsion of behaviour as defined by government administrators. With the adoption of P.C. 1003 in 1944, the sections of P.C. 4020 which were inconsistent with the regulations of the new order were suspended, but the sections relating to investigation by commissions for wrongful dismissal, union coercion, and







effective utilization of labour in the war effort, remained in force supplementary to P.C. 1003.

"Projecting control of union behaviour beyond the IDI Act restrictions, the government, by Order-in-Council P.C. 7307, September 1941, made it unlawful to strike even after a board of conciliation had reported, unless and until a vote had been taken by the Department, and a majority of the workers affected had indicated that they favoured strike action. This order was adopted, to quote the Minister, 'to prevent the calling of strikes by snap decisions of minority groups and to insure the minimum interference with war production.' It involved heavy fines or imprisonment. During the two and one half years of its operation, twenty votes were held by the Department in response to thirty-six applications, but in the great majority of cases the employees voted to strike. In only five cases, all involving small concerns, four of them in gold mining, did they fail to uphold their leaders. Though a limited number of votes were taken under P.C. 7307, the Order was used effectively by the Director of the Industrial Relations Branch in making a strong effort to effect a settlement, usually before the vote, by arranging a conference at Ottawa.





"Coercion in labour relations first appeared six months after P.C. 2685, with the introduction of the government's wage policy in P.C. 7440, which involved a definite ceiling on wages of war industry, and introduced the escalator system to compensate workers for changes in the cost of living by means of bonuses beyond their regular wages, adjusted according to the cost-of-living index. It applied to industries coming under the IDI Act as extended, and served as a guide to boards created under the Act, which now were confronted with the difficult task of deciding wage rates or ceilings for all the many plants where wage disputes were developing. Administrative stresses were bound to feature such a departure from reliance on free economic forces for the determination of wages. But in this particular venture matters were made worse by the inadequacy of the ad hoc boards, chosen as they were, and by the looseness of the formula provided in the Order as the basis for their calculations. The results were differing interpretations, long delays, minority reports, and much confusion. Organized labour, keenly aware of the loss of probable wage advances through collective bargaining at such a time, became incensed at delays and at the majority judgments of certain boards. A revision and







clarification of the formula in June 1941 was not sufficient remedy for the situation. On the broader economic front, attention was turning to other controls over inflation and to the whole price structure. In October, P.C. 7440 was replaced by P.C. ~~8253~~, the great creative order which accompanied the government's policy of price control. This order extended wage control and the application of the cost-of-living bonuses to all employees, and provided permanent enforcement machinery in place of the ad hoc boards of the IDI Act heretofore in use. The new machinery took the form of a National War Labour Board and nine regional war labour boards; the boards in each case consisted of an independent chairman and an equal number of employees' and employers' representatives.

"These two orders-in-council, affecting wages only, are important for our record, not only for the experience in state control they provided in themselves, but also because one of them, P.C. 8253, afforded the administrative pattern later adopted in controlling the wider area of labour relations, and because together they mark the introduction of a six-year period during which wage determination was largely cut off from the regular processes of bargaining, whether collective or individual, and the





content of collective agreements was correspondingly restricted. The unions, seeking always to expand the items through which they might find gains, felt this limitation strongly. Denied the weapon of wage demands, they were forced to alternative demands of less general appeal to the rank and file . . ."

I see you have taken off your coat, Mr. Macaulay, so I will permit you to read from here on.

MR. MACAULAY: I wish I had not taken my coat off.

"The situation in 1942:

"From the standpoint of the unions, labour relations in the summer of 1942 were definitely discouraging, yet challenging. Discrimination against labour leaders was common. Recognition was denied to the gold miners of Ontario and Quebec, to steel workers at Hamilton (although agreements were signed at Algoma and Sydney), to metal workers at International Nickel, to many of the workers in rubber tires and the packing houses, to employees of government plants and plants operating under government controllers. In the motor car industry local leaders had signed contracts but there was no recognition of the International. Meanwhile in the United States, labour, under a government favourable to it, was following





up its victories of the 'thirties with the capture at last of Little Steel (the 'last bastion in primary industry') and with the new agreement with Ford. To the Canadian leaders the harvest seemed ripe and the season was passing. All three labour congresses - the National Catholic as well as the internationals - were calling for government action in line with union accomplishments elsewhere and with its own recommendations of 1940.

"The general discontent of organized sections of labour possessed the conventions of the congresses in the fall of 1942. At that of the Trades and Labour Congress a series of resolutions demanded a Wagner Act for Canada.

The handling of a major dispute at Kirkland Lake,' declared another, 'was a glaring example of the inability of the government to deal effectively with a situation of labour relations during a critical period.' But other voices indicating closer contact with the government counselled patience, arguing that things were really moving toward the legislation labour had long been seeking. At the meeting of the Canadian Congress of Labour the pressure for compulsory bargaining was expressed in nineteen resolutions subsumed into one, and plans were made to enlist the support of the







public. The Hon. Peter Heenan, Ontario Minister of Labour, who was visiting speaker at the convention, was moved to promise an early bill in his province giving expression to the people's wishes.

The public hearings of 1943:

"The year 1943 is to be remembered for an interesting experiment in democracy. Not only the Dominion but the Province of Ontario sought guidance for itself, and education for the public, by providing open hearings on industrial relations at which the various groups in the community affected might be heard. In Toronto, in the late spring, the Heenan Bill was held in abeyance for weeks while various delegations submitted opinions and requests before the Committee on Collective Bargaining. Both congresses sent delegations as did the Canadian Manufacturers' Association, the Toronto Board of Trade, the Canadian Chamber of Commerce, and others.

"The general economic and political situation at this time was complex. On the one hand, the unusual demand for war goods provided an unprecedented sellers' market for labour and an obvious opportunity for trade union advance; on the other hand, employers' refusal to bargain collectively and the workers' patriotism





expressed in part in no-strike pledges, combined with the limited possibilities of wage bargaining owing to government control, cramped the style of union activity. One result was an emphasis on bargaining for recognition, with a free use of conciliation boards to implement that purpose. Another was the flowering of employee representation. A third was a marked deterioration in labour relations generally. A factor contributing to that deterioration was the continuing failure of the government to implement collective bargaining in its own or controlled industries. The low point came with the defeat of the unions in the costly eleven-week recognition strike at Kirkland Lake in the winter and spring of 1942. Here were thrown into clear relief many of the issues which caused the confusion of the period, namely, the disagreement over the bargaining unit, the uncertain status of the company union, the right of an employer to deny bargaining rights to a majority union, the need and the method of taking a 'vote, and so on. Here, also, was a head-on clash between a representative company and organized labour which involved the participation of a number of unions and a wide collection of union funds. It was, as well, a test of government interference without a





sufficient definition of its role - a test which it met with no great credit to itself and little assurance of stability in industrial relations for the future.

"Faced by these difficulties, Ontario took legislative action: in the spring session of 1943 it passed the Collective Bargaining Act. The regulations of the Act making collective bargaining compulsory were to be administered by the Labour Court of Ontario, which was provided for under an amendment to the Judicature Act and came into being on June 14. This Act is interesting as the first Canadian experiment in providing administrative machinery to enforce collective bargaining, and for its record of accomplishment during the eleven months of its existence. Particularly interesting are the marked differences between the administrative structure it established with the methods of operation developed under it, and that formed by the dominion order-in-council to which it gave way with the methods of operation envisaged for the new body. Taking advice from many of the same organizations through public hearings, and presumably dealing for the most part with the same problems, the two governments brought forth very different instruments. The Ontario Act showed a greater dependence on







the institutions of the law, modified to suit the specific purpose, it is true, but nevertheless relying on a court with court procedure; it did not assume responsibility for assisting the parties in the bargaining process; it trimmed closer to the Wagner Act . . .

"The dominion government during this same period was also seeking a considered expression of public opinion. Lashed by the unions' criticism and worried by their increasing dislike of the National War Labour Board, it was impelled in February to substitute for the old twelve-man board a new three-man board of eminent lawyers and to assign to it the task of reviewing the whole labour situation and reporting to the government its findings. This Board held hearings from April 15 to June 27: briefs were submitted by upwards of forty organizations or interested persons, eighteen being representative of workers and ten of employers. The hearings were prolonged by the elaboration of points suggested during the oral examination of the briefs, and by the replies to the Board's challenges concerning accuracy, and so on. The Board consisted of Mr. Justice C. P. McTague, Chairman, Mr. Leon Lalonde, and Mr. J. L. Cohen, Q.C. . . .

". . . the hearings did bring together a





great body of data revealing not only the wishes of a single group, but those held in common by many groups, those held strongly and taking priority over others, those held reasonably or unreasonably, and finally, conflicting wishes demanding compromise or choice between them. This body of data, reflecting the thought and ambition of many differing groups at this particular time, was pressed on a single board of three able men to collate, evaluate, and shape into suggested legislation for the improvement of labour relations. Unfortunately the three men, representing different life experiences, and impelled by different philosophies, failed to reach common ground in interpretation and recommendation. During the period of studying the briefs after the hearings had been completed, Mr. Cohen and Chairman McTague disagreed. Although, as stated by Mr. Cohen 'they could not agree completely either as to the nature of the problem or as to the specific recommendations which should be made,' the major difference between them was probably one of emphasis as to the ultimate purpose of the investigation and the uses to which the report was to be put. Mr. Cohen, having resigned from the Board, refused to sign the majority report but wrote a lengthy minority report. He later appeared at the





conventions of both major congresses, intending apparently to use both reports in a controversial way to 'force' the government into legislation generous to labour. In this role of champion of labour he was thwarted by the refusal of the Prime Minister to release at that time the reports which had been submitted in August.

. . . according to a statement made by the Prime Minister on December 4, both reports were 'carefully studied by the Government in considering modifications of its labour policy.' They were not tabled in the House of Commons, however, until January 28, 1944.

The 1943 conference of labour ministers:

"A stage in the progress toward a national code for labour relations for war industry is marked by the Dominion-Provincial Conference of Labour Ministers held in Ottawa, November 8 to 10, 1943. There the dominion government, in the hope of achieving co-operation in the impending labour legislation, sought provincial views on policy. Upwards of forty representatives attended the meeting with the Hon. Humphrey Mitchell, Dominion Minister of Labour, in the chair. The Dominion Department of Labour, having previously forwarded copies of the Majority and Minority Reports to the provincial departments, now circulated a tentative set of proposals to the conference avowedly based







upon the reports and especially on that of the McTague-Lalande majority report. These proposals were limited to four which, along with the manner of their introduction, tended to soft-pedal differences in the reports to the degree that some important issues were neglected and, as a consequence, some delegates probably failed to make their full contribution. The proposals were:

1. The enactment, as a war measure, of a Labour Relations Code applicable to all war industries in Canada;
2. Provision for compulsory collective bargaining and for compulsory arbitration of disputes with adequate machinery for enforcement thereof;
3. Administration of the Code by a National Labour Relations Board;
4. The abrogation or suspension of existing legislation in the form of the Industrial Disputes Investigation Act and of the extending and modifying orders-in-council.

"A formal statement was included defining war industries and announcing that the government proposed to pass a Wartime Labour Relations Order which would cover these four points, and in addition, would prohibit unfair labour practices, set up administrative and appeal





procedures, and maintain conciliation services which would be available to the board.

"The provincial representatives were invited to criticize, advise, and make suggestions, but endorsement of the four proposals was sought. Indications are that the conference was only a qualified success. A dominion delegate commenting years later remarked 'We got enough to get by'. The provincial representatives showed either little knowledge of or lack of interest in the National War Labour Board hearings and reports, though a summary of the hearings was circulated on the second day. They were interested in jurisdiction - in the advisability of yielding jurisdiction then, and the problem of recapturing it when the emergency had passed; in whether to operate a dominion order by means of provincial administration or to yield administration to the federal power; and, finally, in the division of industry by means of a new and uncertain boundary line, one area to be federal, the other provincial.

". . . Ontario . . . already troubled with the jurisdictional problem of operating at once a provincial labour court for labour relations and a wage control board under dominion legislation, pleaded stoutly for dominion jurisdiction for all industry, but for decentralization





in administration for the provinces that were equipped. In this situation it saw the national board functioning chiefly in an appellate role. The Ontario position, although supported by the prairie provinces, was not allowed to prevail, with Quebec, the Maritimes, and British Columbia dissenting. Ontario was finally mollified by a suggestion from Saskatchewan that the order should name war industry as the object of the Code but that any province - if it wanted to - could have the federal machinery applied to the residue in the province . . .

"The dominion departmental officers, who at this time were framing an order-in-council, apparently conceived of the board as playing a bigger role than that subsequently assigned to it under P.C. 1003. They suggested, for instance, that, in cases where conciliation services had failed to assist in negotiating an agreement, the national board after reviewing the proceedings should issue a report containing a recommendation as to the terms and conditions of employment on which it believed the parties should agree. If the parties failed to agree, even after such a report, and the board felt that their failure might lead to substantial interference with the war effort, it might, with approval of the Governor General in Council, provide by order







the terms and conditions of employment appropriate to the circumstances. These provisions must be binding upon the parties, until further order of the board, as if contained in a collective agreement conducted by them. Elsewhere they would have had the board, or perhaps panels selected from its members, performing the arbitration function as a final step in disputes. In these matters, they drew helpful challenges from provincial representatives.

"By and large, it must be said that the form and content of the impending order-in-council were not greatly affected by this Conference of Ministers. Apart from the trimming of the board's functions and the revelation of differing positions among the provinces toward jurisdiction, the discussion was not creative, and in view of jurisdictional incompetence, the provincial representatives declined to offer any resolution affecting the Dominion in the performance of its task. It should be appreciated that the unhappy industrial relations of the time had forced the government of both Dominion and provinces into legislative areas as yet largely uncharted. The meeting was doubtless very worthwhile in that it afforded ample opportunity for discussion between dominion and provincial personnel. The three days together, the obvious differences





in the interest of the war effort, contributed, perhaps more than the debate itself, to this result.

"From here the dominion departmental officers carried on the work of revision. Various individuals from labour and management were called in for consultation on special points. An amended edition was forwarded to the provincial ministers in December with further requests for comment and suggestion . . ."

THE CHAIRMAN: I think perhaps we will give you a rest now and ask Mr. Macdonald to carry on from there.

MR. MACDONALD:

"THE COLLECTIVE BARGAINING ACT  
OF ONTARIO"

"The Collective Bargaining Act of Ontario (April 1943) drew heavily on the recommendations of the Committee of Enquiry appointed by the legislature early in the session to hold hearings and report. It required an employer to negotiate with the representatives of a collective-bargaining agency which had been certified as appropriate by the Labour Court of Ontario, a branch of the High Court of Justice of the province created to administer the Act. Under a procedure decided upon when the Court was set up, the judges in the High Court sat in





rotation in the Labour Court, each occupying the bench for a period of two weeks. The Act made it unlawful for an employer to discharge or otherwise discriminate against workers because of trade-union activity (or for him to make it a condition of employment that they must abstain from joining or assisting a collective-bargaining agency). In considering an application for certification, the Court was empowered to determine the unit - whether a firm, plant, craft, or part of a plant - which was appropriate for collective bargaining, and to determine the will of the employees by means of a vote or in any other way it saw fit. The Court was to refuse certification to an employees' association dominated or improperly influenced by an employer, and it could order the reinstatement of any worker discharged for union activity with his loss made good. More generally, wherever there was a violation of the Act, the Court's responsibility was to restrain the perpetrator from continuing the violation and direct him to comply with the provisions of the Act. The close similarity with the Wagner Act is apparent in its prescriptions for control and remedy as well as elsewhere. The judicial character of the Ontario Labour Court, however, as contrasted with the dependent status of the Wagner







Board suggests a stronger enforcement mechanism. Beyond certification - like the Wagner Act - the Act afforded no direct assistance to the parties in negotiating an agreement . . .

"Criticism of the Act came mostly from organized labour - particularly from the left wing - and centred on administrative forms and processes. They lamented the inexperience of the judges in this field - a condition made worse by the system of rotation - and the lack of continuity in policy that an experienced board would give. They protested the procedure whereby only lawyers might present cases while labour leaders could appear only as witnesses. Rules of evidence, they maintained, were foreign to collective bargaining and hearings should be public. They professed to fear that the Court, with these restrictions upon popular expression before it, was encouraging employers in their use of company unions . . .

"Nevertheless the contribution made by the Labour Court was considerable. The big manufacturers, including such firms as International Nickel Co. of Canada Ltd., Massey-Harris Ltd., Canadian Westinghouse Co. Ltd., and Canadian Locomotive Co. Ltd., accepted collective bargaining, and the so-called 'bastard agreements' with the automobile industry gave way

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to agreements signed by the union and involving (where desired) recognition of the international. Altogether its contribution to the building of a scheme of industrial jurisprudence in the Province of Ontario and, by diffusion, in other parts of Canada is of the highest significance. The following evaluation by its registrar written two years after the Act's repeal is scarcely an overstatement: 'The Ontario Labour Relations Board,' which took its place in the new legislation of March 20, 1944, 'has been spared the onerous task of breaking new ground; it has been in the fortunate position of being able to build on the solid foundation already laid by the Labour Court. Indeed it is not too much to say that, but for the Labour Court, collective bargaining might have been less readily accepted by industry as a normal feature of industrial relations in Ontario.' As proof he referred to the 'protracted legal battle which hampered the National Labour Relations Board of the United States . . .'

WARTIME LABOUR RELATIONS REGULATIONS:

DOMINION ORDER- IN-COUNCIL P.C. 1003

"Privy Council Order 1003, February 17, 1944, had for its object the maintenance of industrial peace and the promotion of collective bargaining satisfactory both to employers and





employees. As noted above, it came into effect following conferences with labour and business leaders, and with the provincial labour departments, and beyond these it drew on the public hearings before the National War Labour Board. It benefited from the experience of the recently established administrations in British Columbia and Ontario and doubtless from contemporary developments in the United States. An analysis of its parts reveals it to have drawn heavily upon, in fact to have been constructed from elements of, the American Wagner Act, the Canadian Industrial Disputes Investigation Act as amended, and, for the structure of its administrative arrangements, the dominion system of wage control first elaborated in 1941 in P.C. 8253. Inasmuch as its purposes are so similar to those of the Wagner Act, it will be instructive to compare it with the latter, noting especially its areas of difference.

"P.C. 1003 marched with the Wagner Act in declaring labour's right to organize and bargain collectively without loss, through representatives of its own choosing. Like the American Act, it provided for a permanent board to determine the appropriate bargaining unit and to certify representatives of the majority, with or without an election, with whom the employer







must bargain. It also named as unfair such practices of employers as discrimination against workers for belonging to unions, and domination of, or making financial contributions to, particular workers' associations.

"But at this point the close resemblance ceases. The Canadian order followed the principle of giving assurances to and naming proscriptions against both parties. Thus Article 4 stated that while 'Every employee shall have the right to be a member of a trade union or employees' organization and to participate in its lawful activities,' so also 'Every employer should have the rights to be a member of an employers' organization and to participate in the lawful activities thereof'; and under the title Unfair Practices, Article 9, which forbade the discrimination and domination tactics of employers as stated above, had its counterpart in Article 20 which proscribed the use of coercion and intimidation of any kind by anyone attempting to influence another person to join a trade union, and forbade any trade union to encourage a 'slowdown' or other activity designed to restrict production, and also to attempt to recruit members on the employers' time without the latter's consent, at the workers' place of employment.





"P.C. 1003 differed in an important respect in that it forbade strikes and lockouts (Article 21), first, during the period of negotiation (including fourteen days after the board of conciliation had turned in its report) and second, during the life of the agreement.

"The Order showed concern for the administrative competence of certified collective agreements, by requiring (Article 18) that every collective agreement should contain a provision establishing a procedure for final settlement of differences concerning interpretation or violation without stoppage of work; and where an agreement (presumably already written before date of the Order) did not provide an appropriate procedure, the Board should, upon application, by order, establish such procedure.

"The Board itself, called the Wartime Labour Relations Board, consisted of a chairman, vice-chairman and not more than eight other members, the latter in practice (though not required in the Order) being chosen in equal numbers from employers and trade-union leaders. These representative members served part time according to the number of cases. The Canadian Board therefore would classify as representative and part-time in contrast with the American full-time board of experts -





usually lawyers and economists.

"The responsibility of the Canadian Board ceased after negotiation for a period of thirty days by the parties, and was then transferred to the Minister of Labour as the controller of the conciliation staff and of conciliation ad hoc appointments, whereas the American Board had no such escape. The Canadian Order thus provided for a division of labour in the administration of lengthy disputatious cases or for a sequence in administration, first by the Board, then by the Minister (assisted by his various conciliation appointees) and, after the signing of the agreement, by Board and Minister again in different roles. The function of the two may be described as mutually dependent but not co-operative.

"The differences between the Acts (in respect of enforcement) is instructive. In the United States the Board laid a charge against an offender through one of its many regional offices, notified the party charged, and set a date for a hearing. There it took evidence and arrived at a judgment. If it settled against the offender, it issued a cease-and-desist order, and perhaps an order to reinstate and reimburse aggrieved workers. If the offender failed to obey, the Board itself had







no powers to impose penalties, but might petition a federal circuit court to issue a decree which might enforce, modify, or set aside the Board's order. Under Canada's P.C. 1003 there was less dependence on administrative prevention of offences than that involved in the cease-and-desist order, though provision was made for it (Articles 38 and 39), but P.C. 4020 did provide for a commissioner who could order reinstatement, which the Minister carried out. Yet reliance was more upon punishment in the form of fines and imprisonment measured in advance against various offences (Articles 40-44). The Board, furthermore, exercised control over the institution of prosecutions by the aggrieved party by giving or withholding its consent (Article 45), which meant exercising a measure of discretion concerning the merit of the request in each case. The Board was to consider whether the proposed prosecution was frivolous or vexatious and whether its initiation was in the public interest.

"A great departure from the Wagner Act and, indeed, from all compulsory collective bargaining legislation heretofore existing, except for the Act of British Columbia as amended in 1943, was the inclusion of regular conciliation assistance in the settlement of disputes arising in the course of negotiation of agreements. This





assistance was offered - was in fact compulsory - according to a definite pattern. Its inclusion, while probably influenced by the experience of British Columbia, stemmed directly from the Dominion's own use of the Industrial Disputes Investigation Act and P.C. 4020.

"In P.C. 1003 the complicated instructions appeared in Articles 11-14 with administrative detail filling Articles 29-35. Briefly summarized they are as follows: Where negotiations had continued unsuccessfully for thirty days and either party had applied to the Board to intervene, the Board was required to refer the request to the Minister who, within three days, was to instruct a conciliation officer to confer with the parties and attempt to effect an agreement. Within fourteen days of receiving his instructions, or within such longer time as the Minister might allow, the conciliation officer was to report to the Minister setting out in full: (a) the matters, if any, on which the parties could not agree and his recommendations with regard thereto; (b) the terms, if any, upon which they had agreed; and (c) whether, in his view, an agreement might be facilitated by appointment of a conciliation board. If the officer recommended a board, the Minister should forthwith appoint one after the usual three-man pattern of the Industrial





Disputes Investigation Act to work with the parties, on the presumably narrowed items of disagreement, and within fourteen days of the appointment of its chairman or within such longer period as might be agreed upon by the parties or as might be allowed by the Minister, the Board was to report the result of its endeavours, its findings, and its recommendations to the Minister. If the report showed inability to effect an agreement, the Minister was required forthwith to send a copy to each of the parties, and he might publish it in such manner as he saw fit.

"High points to be noted in all this assistance are: (a) the sequence in conciliation involving different personnel at different stages; (b) the elasticity in the time to be used in the whole operation in spite of the specific limiting periods assigned for particular operations; (c) the sole discretion of the Minister in the matter of publicizing the report.

"Finally P.C. 1003, in rather faltering language, made provision for provincial participation (Articles 36 and 37). The Minister might enter into agreement with the government of any province to provide for the administration thereof; and such agreement might provide for the transfer to the government of the province or persons specified by that government, of







all or any part of the jurisdiction in respect of matters within that province now possessed by the Board.

"Pursuant to the fulfilment of such agreement, there came into being regional boards clothed with the promised authority in the provinces of Ontario, New Brunswick, Nova Scotia, Manitoba, Saskatchewan and Quebec. These boards were patterned after the National Board, save that of Quebec which took the form of a full-time, three-man board of experts. In British Columbia the Minister of Labour took the place of a board.

"Very important was the clause suggesting that the agreement might provide a procedure for appeal to the national Board from a decision made in the exercise of the jurisdiction so conferred. This also was soon to become an operative feature . . .

". . . The Order-in-Council . . . divided employees who would be governed by its regulations into three categories according to the nature of their employment, as follows:

- (1) Those who were in undertakings normally within the legislative authority of Parliament, as declared in the Amendment to the IDI Act in 1925, including not only such industries as railways, telegraphs,

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steamship lines, and ferries between two provinces, but 'such works as, although wholly situate within one province, have been or may be declared by Parliament to be for the general advantage of Canada or for the advantage of two or more of the provinces.'

- (2) 'Those who are employed upon or in connection with a work, undertaking or business that is essential to the efficient prosecution of the War.' The undertakings coming under this category were set forth in a schedule attached, but provision was made for a possible change in future by addition or deletion by new orders-in-council. They included mining and smelting; manufacturing or assembling aircraft parts, tanks or universal carriers, automobile or truck parts; smelting or refining aluminum; refining or producing oil or petroleum products; producing or processing natural or synthetic rubber; manufacturing steel and chemicals for war industry or war purposes; shipbuilding (including accessories); producing machinery, arms, shells, ammunition, and other implements of war; building or construction or demolition





projects under contract for the government; transportation and communication; and public utilities including gas, electric, water, and power works . . .

- (3) Workers in industries ordinarily within the exclusive jurisdiction of a provincial legislature and to whom the regulations of this Order were to be applied only by action of the province . . .

"That the provinces would travel different roads was already predictable in November 1943. Mr. MacNamara, Deputy Minister of Labour, speaking at a second Dominion-Provincial Conference of Labour Ministers in October 1946, when the legislation had been continued in effect under the National Emergency Transitional Powers Act, reported that the Order had been applied by provincial legislation to all provincial industries in Ontario, New Brunswick, Nova Scotia, Manitoba and British Columbia; that provincial boards 'established pursuant to agreement between the legislation for the provinces' were administering the legislation for provincial industries in the first four of these provinces, while in British Columbia (whose 1943 Act, after adjustment to P.C. 1003, continued without provision of a special board) the Minister of Labour acted in the same capacity. In Quebec and







Saskatchewan, provincial boards likewise 'established pursuant to Dominion-Provincial agreements, administered the Order in its application to war industries in their respective provinces, but the application to other industries had not been provided by provincial enactment. In all these instances, provincial board decisions were subject to appeal by leave to the national Board. In Alberta and Prince Edward Island the administration of the Order with respect to industries covered by it (our categories 1 and 2) were left to be handled from Ottawa by the National Board and the Dominion Department of Labour. Mr. MacNamara also reported that the conciliation services of the Dominion and provinces were being 'jointly utilized' in the administration of the legislation in a number of the provinces; and that where provincial boards or agencies were administering the legislation in a province, the costs involved were being shared between the Dominion and the province in the proportion of 66 to 33 per cent."

THE CHAIRMAN: Thank you, Mr. Macdonald.  
I will ask Mr. Spooner to continue.

MR. SPOONER:

"PREPARING FOR PEACETIME LEGISLATION

"In 1946, with the expected lapse of the





National Emergency Transitional Powers Act on or before March 31, 1947, P.C. 1003 and P.C. 4020 were likewise due to lapse. To meet the situation and to lay permanent plans for the peace, a second Conference of Labour Ministers was called for October 15, 1946, just one month short of three years after the first Conference. The federal Minister was to act again as chairman and as host . . . The spokesmen for the Dominion took the lead in presenting suggestions for consideration and discussion, as they sought the advice and assistance of the provinces. (The suggestions included the following: . . .)

'The dominion officers, because of the fluid nature of labour-relations administration and the way collective-bargaining practices (were) changing without regard for provincial boundaries, believe(d) it advisable, in the interests of labour and management and in the national interest, to consider as far as reasonably possible uniformity of legislation and a standard pattern of administration by Dominion and provinces, in order to deal effectively with difficulties arising in labour-management relations. They believe(d) that if the dominion legislation (could) be so framed that it (would) meet the





views of all provinces, it (might) quite well develop that provincial governments (would) see fit to adopt the same provisions in provincial enactments to apply to all industries which f(e)ll under provincial jurisdiction. In this way, uniformity would be attained . . .'

". . . No definite undertaking was given . . . as to how uniformity was to be maintained - presuming all ten jurisdictions got away to a fairly uniform start. But there seems to have been some discussion of maintaining a common mentality and practice through annual conferences of labour ministers accompanied by selected members of their staffs. Among the resolutions of the Conferences being convened at Ottawa by the dominion Minister to consider matters of joint interest to the Dominion and the provinces . . .

"Near its close, the Conference went on record in supporting two significant principles: (a) it recognized the responsibility and jurisdiction of the provinces in collective-bargaining legislation, with the exception of coverage of those industries which come within federal jurisdiction; (b) it recommended the adoption, as far as practicable, of uniform collective-bargaining legislation by the provinces and the Dominion . . .







Transitional orders-in-council:

"Amendments by order-in-council in January and May 1947 brought important changes to P.C. 1003, calculated in part as preparation for more closely integrated and orderly permanent legislation. These involved:

- (1) The formal return of wages to the ambit of collective bargaining . . .
- (2) Incorporation into P.C. 1003 of the provisions of P.C. 4020 governing the appointment of Enquiry Commissions by the Minister to investigate disputes . . .
- (3) Clearing the way for legislating the anticipated new peacetime division of jurisdiction by deleting from P.C. 1003 Section 3(1)b, (2), and (3) and Schedule A in January; and of Section 3(1)c and (4) in May. These sections had named the war industries and declared their special jurisdictional status as well as that of purely local industries under the Wartime Regulations.

While none of these amendments was declared effective immediately, the psychological effect was of some importance and the changes enabled the provinces to pass accommodating legislation.

"Meanshile, following the Conference of

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Ministers and further contacts and communication with leaders of interested groups, the federal Department drafted a bill which was introduced in the House of Commons as Bill No. 338. It was referred to the Standing Committee on Industrial Relations, and in July 1947 briefs were presented to the Committee by organizations of employers and employees . . . ('The report of the Committee stated that, with prorogation imminent it would be impossible to give the Bill the full consideration its importance required, and recommended that a similar bill be introduced early in the next session of Parliament. Accordingly, the matter was allowed to stand over until the next session to give members of Parliament free opportunity to study carefully the evidence given before the Standing Committee. In April 1948 the Minister of Labour introduced another Bill (Bill 195) into the House of Commons the provisions of which were only slightly different from the previous Bill. The new Bill in turn was referred to the Standing Committee on Industrial Relations. In May this Committee reported the Bill to the House with amendments . . . The new Act, . . . entitled the Industrial Relations and Disputes Investigation Act, was proclaimed in August 1948 . . .') See The Labour Gazette, vol. 50, pp 1056-7.)





## THE INDUSTRIAL RELATIONS AND DISPUTES INVESTIGATION ACT

"The Industrial Relations and Disputes Investigation Act became effective September 1, 1948. It replaced P.C. 1003, and the IDI Act (which technically had been only suspended during the life of P.C. 1003) and P.C. 4020. It represents in large measure a revision of the Wartime Labour Relations Regulations through modifications and additions drawn from the experience of four and a half years and from representations by provincial authorities, organized labour, and employers' organizations . . . The re-establishment of provincial jurisdiction - the cause of so much worry to provincial Labour Ministers at the two conferences - was made relatively complete, but aerodromes, aircraft and lines of air transportation, and radio broadcasting stations were specifically listed as within federal jurisdiction. Crown corporations, which had increased in importance, were made subject to the Act except where excluded by the Governor-General in Council.

"The most important changes from the provisions of the former Order P.C. 1003 are the following:

- (1) 'Employee is defined for purposes of the Act so as to exclude among 'confidential







employees' only persons employed in such a capacity in relation to labour relations, and to exclude among 'supervisory employees' those persons who exercise management functions. Engineers are named with the professional people excluded by the definition. (Section 2 (1,i)).

- (2) Trade unions are to be certified as bargaining agents for employees rather than individual representatives as formerly under P.C. 1003. (Section 2, (1,b)). Thus organized labour won a point long sought, and the strength that lies in the constitutional relationship between local and international was given expression.
- (3) Technical employee groups are named as appropriate for units as well as craft groups already named in P.C. 1003 (Section 2 (3)).
- (4) The basic requirements of the legislation for the certification of a trade union as the exclusive bargaining agent for a unit of employees are that the majority of the employees in the unit be members in good standing of the union or that a majority of the employees in the unit under a vote taken by the Board cast their votes for the union. In P.C. 1003 written





authorizations, given by employees in favour of a union as their chosen representative, were also accorded recognition as the equivalent of actual union membership for purposes of certification. Section 9(4) reflects attention to the administrative detail for determining beyond doubt the majority union.

- (5) A new provision - an answer to the employers' plea - gave the Board discretion to revoke certification where it is satisfied that the union no longer represents the majority of employees. (Section 11)
- (6) The provisions for use of conciliation services are modified to permit earlier access thereto. No period is named during which negotiations must continue before conciliation is available, and the fourteen-day no-stoppage period after a board has submitted its report is reduced to seven days. On the other hand, the Act leaves more discretion to the Minister concerning when the Board's report is to be made to him. (Section 35)
- (7) Unions are prohibited not only, as before, from declaring or authorizing strikes until the collective-bargaining procedure and conciliation measures prescribed have





- been complied with, but also, now, from
- taking a strike vote of the employees concerned until these procedures have been terminated. (Section 21)
- (8) Employers during the period of negotiation and conciliation may not reduce wage rates or change working conditions in effect, without the consent of employees. This provision, although in the IDI Act, was not in the original P.C. 1003. (Section 14 (b))
- (9) A collective agreement entered into by a certified bargaining agent is, subject to and for the purposes of the Act, binding upon the parties making it, and upon all employees in the bargaining unit as designated.\* (Section 18)
- (10) No agreement entered into by an employer and a trade union dominated by him or so influenced by him as to destroy its fitness for collective bargaining is a collective agreement for the purposes of the Act. This is added to the prohibition in P.C. 1003 of certifying such a union. (Section 9 (5))
- (11) The court of law which finds an employer guilty of discharging an employee for union activities, contrary to the Act,







is empowered to order him to reinstate the latter and pay him back wages. (Section 40 (2))

(12) The Labour Relations Board has authority to investigate complaints of failure to bargain collectively upon request of the Minister of Labour, and to order compliance where the complaint is upheld. Failure to comply is an offence. (Section 43)

(13) For the purpose of prosecution under the Act a trade union or employers' association is deemed to be a person. (Section 45)

(14) Provision is made for the use of an Industrial Inquiry Commission for ministerial investigation of situations believed to threaten industrial peace and also of complaints of infractions of the Act. While not included in P.C. 1003, except during the latter's final year as amended, this technique had been a feature of P.C. 4020 used in discrimination and other alleged offences in the years immediately preceding P.C. 1003, and had been continued contemporaneously with it in common practice. (Sections 44 and 56)





TECHNIQUES OF ADAPTATION: ONTARIO LABOUR  
RELATIONS BOARD ACTS OF 1944, 1947, and 1948

"It is well to recall here the distinction between the 'war industries' listed as such under Schedule A in the Order and the 'residue' industries whose industrial relations would, apart from special action by a province, still be under provincial jurisdiction. Ontario's . . . legislative action, subsequent to the issuing of the Order, has been well described by Professor Finkelman:

' . . . Since the operation of two parallel schemes for dealing with labour relations would have produced chaos in a heavily industrialized province such as Ontario, the Province availed itself of the opportunity afforded by the regulations to bring all industries within the scope of the regulations. Accordingly, the Legislative Assembly of the Province enacted the Ontario Labour Relations Board Act, 1944, which inter alia empowered the Lieutenant-Governor in Council to make applicable to that portion of industry which remained within provincial jurisdiction ('provincial industries') the Wartime Labour Relations Regulations as well as certain other federal Orders-in-Council and any amendments to such regulations and any





other regulations which might be made under or pursuant to the War Measures Act. Any regulations so brought into effect by the Lieutenant-Governor in Council continue in full force and effect notwithstanding their revocation by the federal Government and notwithstanding that, because of the termination of the war or for any other reason, they may become inoperative as regulations under the War Measures Act. In addition, the Act provided for the establishment of the Ontario Labour Relations Board to exercise such powers and to perform such duties as might be vested in or imposed upon it by the Act, or by any other Act of the Ontario Legislature, and by any regulation or agreement made under or pursuant to any of such acts.

'The Lieutenant-Governor in Council, by Order-in-Council of May 18, 1944 (O. Reg. 53/44), then made the regulations applicable to all employees whose relations with their employers are ordinarily within the exclusive legislative jurisdiction of the Legislature of Ontario to regulate in the manner provided in the regulations and to the employers thereof. By agreement between the Dominion and the Province, confirmed by







Orders-in-Council (P.C. 2911 of April 27, 1944 and O. Reg. 52/44), the jurisdiction and powers of the Wartime Labour Relations Board (national) under the Wartime Labour Relations Regulations in so far as they pertain to 'war industries' and to 'provincial industries,' except for certain matters which might extend beyond the boundaries of the Province, were vested in the Ontario Labour Relations Board. All decisions and Orders of the Ontario Labour Relations Board, whether in respect of 'war industries' or in respect of 'provincial industries' were made subject to appeal to the Wartime Labour Relations Board (national) by leave of either the Ontario Board or the National Board.'

"February 1947 saw the return to the provinces of their normal peacetime jurisdiction in the sphere of labour relations. On April 3, 1947, the Ontario Legislature enacted the Labour Relations Board Act, 1947, which (a) strengthened the provision of the 1944 Act for the continuance in force within the province, with any necessary alterations, of the provisions of P.C. 1003 and P.C. 4020, and of Schedules A and B respectively of the Labour Relations Board Act, 1944; (b) provided for the disposition of appeals pending before the Wartime Labour Relations Board (national) on the date of the coming into force of the Act; and (c) provided for





the appointment of conciliation officers and conciliation boards by the Dominion Minister of Labour in disputes referred for such purpose by the Ontario Labour Relations Board on or before the date of the new Act's coming into force. With the collaboration of the dominion government in revoking and passing necessary orders-in-council, the Chairman of the Ontario Board, Mr. P. M. Draper, was able to state in the annual report of the Department for 1948:

'At the end of the fiscal year (March 31) the labour relations regulations in force in the province were in all material respects identical to those contained in P.C. 1003, which, at that time, was still in force within the Dominion's own sphere. There remained, however, no link between the two jurisdictions.'

"On April 16, 1948, while Bill 195 was in process of passage through the dominion Parliament, the Legislature of Ontario enacted the Labour Relations Act, 1948, which empowered the Lieutenant-Governor to make regulations 'in the same form and to the same effect as that part of any Act which may be passed by the Parliament of Canada at the session currently in progress . . . calculated to cover the same legislative field as Part 1 (of that bill) . . .'. The only variations to be made from the dominion legislation were those considered necessary for the implementation of





the legislation in the provincial field.

"This Act was proclaimed in force as of December 9, 1948, and administrative regulations were passed. The effect was to repeal, except as was necessary for the disposition of proceedings then pending, the Labour Relations Board Act, 1944, the Labour Relations Board Act, 1947, and regulations made thereunder, and to place Ontario in line with the dominion Industrial Relations and Disputes Investigation Act. But the right of appeal to the national Board from the Ontario Board's decision was gone. The seven members of the Ontario Board as appointed pursuant to the Labour Relations Act, 1948, were reduced later . . . to five. This practice of legislating by direct copy of the dominion model continued until the fall of 1950 when Ontario enacted her present Act characterized by more originality. (The Labour Relations Act of 1950 was amended in 1954, 1956 and 1957.)"

THE CHAIRMAN: And there you have it, gentlemen. May I compliment you on your reading ability and I hope we have all been able to digest it as it has been read.

MR. MORNINGSTAR: And the same to you, Mr. Chairman.

THE CHAIRMAN: It is now five minutes after one and I suggest we adjourn for lunch to reassemble







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at two o'clock.

---At 1.05 p.m. the Committee rose for lunch.

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---On resuming at 2:00 o'clock.

THE CHAIRMAN: Gentlemen, we have a quorum and I think we will start. I think, following the procedure of this morning, we will now proceed to read a summary of the provisions of the Labour Relations Act.

MR. LOGAN: Mr. Chairman, before we go on, I would like to give Mr. Macaulay this citation.

MR. MACAULAY: Yes, it is on page 10, at the top.

MR. LOGAN: It is the Attorney-General of Nova Scotia v. the Attorney-General of Canada, 1950, 4 D.L.R. at 369.

MR. MACAULAY: Could I ask Professor Finkleman this; I assume there is nothing new in that ratio decidendi but I never heard of it before. However, when did this principle evolve that you could not hand it to something higher up?

MR. FINKELMAN: I am not an authority on constitutional law and I would beg leave not to answer that question. You might submit it to Mr. Magone.

MR. MACAULAY: Well, he is not coming here.

THE CHAIRMAN: We will get that information for you.

MR. MACAULAY: I would like to know, sir.

THE CHAIRMAN: Well, I don't know.





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MR. MACAULAY: You know, yourself, that delegatus potest non delegare, but what has that got to do with handing something back up?

THE CHAIRMAN: I am not quite sure; I can't understand the reasoning of it, but we will have somebody explain it.

## SUMMARY OF THE PROVISIONS OF THE LABOUR RELATIONS

### ACT

#### INTRODUCTION

"The policy which underlies the legislative scheme established by The Labour Relations Act is to provide a means for collective bargaining between employers and employees through trade unions freely chosen by their employees.

#### ACQUISITION OF BARGAINING RIGHTS

"Generally speaking, a trade union (defined as an organization of employees formed for purposes that include the regulation of relations between employees and employers ..... (including) a provincial, national or international trade union" (section 1, subsection 1, clause i)) may call upon an employer to bargain with it as the bargaining agent for his employees if the trade union represents a majority of his employees in an appropriate bargaining unit, i.e., constituency. The employer may recognize the trade union voluntarily, assuming of course that there is no other trade union claiming to represent







the employees (see, in this connection, section 47a, discussed below at pp.23-4), and he may enter into a collective agreement with such trade union without obtaining the sanction of any government agency. The bargaining rights which the trade union acquires as the result of entering into a collective agreement in such circumstances are equivalent to those which flow from certification of the trade union by the Labour Relations Board. If the employer refuses to recognize the trade union voluntarily, the trade union can require the employer to bargain with it only after it has been certified by the Board as bargaining agent for the employees. With few exceptions, trade unions seeking recognition from an employer as bargaining agent for his employees in the first instance nowadays apply to the Board to be certified (section 5).

Application for certification:

Upon an application for certification, the Board, after considering the representations of the trade union and the employer concerned as to what unit is appropriate for collective bargaining, is required to establish the appropriate bargaining unit (section 6) and then to ascertain how many employees of the employer in the appropriate bargaining unit are members of the applicant trade union (section 7, subsection 1). The Act declares





that a bargaining unit may be an employer unit, a plant unit or any subdivision of either of them (section 1, subsection 1, clause a) but must consist of more than one employee (section 6, subsection 1) and, in determining which of these units is appropriate in any particular case, the Board has complete discretion (section 68, subsection 1, clause d), except where a craft union seeks to represent employees in a craft unit. In the latter case, if the union has a history of bargaining on a craft basis, the Board is required to establish a craft unit (section 6, subsection 2)."

MR. WREN: May I ask whoever may be able to answer the question, what about these new crafts that are developed, say, in the electronics field where it is something new altogether?

MR. FINKLEMAN: That would depend on the history of collective bargaining; if the union can establish a history of collective bargaining, it can apply for certification. In a new operation the length of the history is much shorter than it would be in any of the old business enterprises. Apart from the certification of a craft unit in such circumstances, the Board may find the union is appropriate apart from section 6 sub-section 2.

MR. WREN: Then you can draft a new craft unit into an existing union?





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MR. FINKLEMAN: No. Suppose you had a group of automation experts in a plant, the Board may find that they have an appropriate bargaining unit altogether apart from section 6, sub-section 2.

MR. WREN: So they could enter into negotiations to set themselves up separately?

MR. FINKLEMAN: Yes.

MR. MACAULAY: Mr. Chairman, do you contemplate having members ask questions from time to time at the appropriate places, or would you rather the questions were put at the end?

THE CHAIRMAN: I would rather members make a note of them and then question the appropriate official after we have read the summary.

"Among the considerations the Board takes into account in determining the composition of the bargaining unit is whether any of the persons claimed by either the trade union or the employer as falling within the proposed bargaining unit are (a) "employees" for the purposes of the Act, (b) security guards, or (c) persons to whom the Act does not apply. Members of the architectural, dental, engineering, legal and medical professions entitled to practise in Ontario and employed in a professional capacity, and persons who, in the opinion of the Board, exercise managerial functions or are employed in a confidential capacity in







matters relating to labour relations are not deemed to be employees for the purposes of the Act (section 1, subsection 3). Persons employed as guards to protect the property of an employer cannot be included in a bargaining unit with other employees (section 8). The Act does not apply to (i) any domestic employed in a private home; (ii) any person employed in agriculture, horticulture, hunting or trapping; (iii) any member of a police force within the meaning of The Police Act; (iv) any full-time fire fighter within the meaning of The Fire Departments Act; or (v) any teacher as defined in The Teaching Profession Act (section 2). It should be noted that, under the terms of the Act as it stands today, a municipality (as defined in The Department of Municipal Affairs Act) is subject to The Labour Relations Act unless it declares that the Act shall not apply to it in its relations with its employees or any of them (section 78).

Membership requirements:

"In so far as membership is concerned, there are qualitative as well as quantitative standards for certification. The qualitative standard is outlined in the Board's Rules of Practice and Procedure. The applicant trade union must file:

- (a) individual applications for membership signed by employees of the employer, and





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- (b) either (i) individual receipts for payment of at least \$1.00 by employees of the employer on account of the prescribed initiation fee or monthly dues of the applicant trade union, signed by the payee or countersigned by the payer, or (ii) evidence that the employees have presented themselves for initiation, have taken the members' obligation, or have done some other act consistent with membership in the applicant trade union (see rule 4, form 2).

"The quantitative standards are set by the Act itself:

- (1) If the Board is satisfied that the trade union has in excess of 55% membership in the bargaining unit, the Board may certify the trade union without a representation vote, or it may direct that a representation vote be taken (section 7, subsections 2 and 3). If a representation vote is directed, the trade union can be certified only if it obtains more than 50% of the votes of all those eligible to vote (section 7, subsection 3). Employees who are absent from work during voting hours and who do not cast their ballots are not included in the number of eligible voters (section 7, subsection 4).
- (2) If the Board is satisfied that the trade union has not less than 45% but not more than 55%





membership in the bargaining unit, it must, except where there has been serious employer interference (see below (4)), direct that a representation vote be taken (section 7, subsection 2). The trade union must then obtain more than 50% of the votes of all those eligible to vote in order to be certified (see above (1)).

- (3) If the Board is satisfied that the trade union has less than 45% membership, or if, upon the taking of a representation vote, the trade union obtains 50% or less of the votes of all eligible voters, the application must be dismissed (section 7, subsections 2 and 3).
- (4) A special case arises where the employer has engaged in practices which make it unlikely that the true wishes of the employees will be disclosed by a representative vote. In such circumstances, the Board may certify the trade union without a vote if more than 50% of the employees in the bargaining unit are members of the trade union (section 7, subsection 5).

"In working out its procedures in certification cases - and indeed in what are referred to somewhat inaccurately as "decertification" cases (see below pp. 16ff.) - the Board has had to take into account the provision of the Act that the records of a trade union relating to membership or any records that may disclose whether any person is or is not a member of







a trade union or does or does not desire to be represented by a trade union are for the exclusive use of the Board and its officers and not subject to disclosure save with the consent of the Board (section 72, subsection 1).

#### NEGOTIATION OF COLLECTIVE AGREEMENT

"Following certification, the trade union which has been certified is required to give to the employer written notice of its desire to bargain with a view to the making of a collective agreement (section 10). The parties are required to meet within 15 days from the giving of notice or within such further period as the parties may agree upon and they are required to bargain in good faith and make every reasonable effort to make a collective agreement (section 11). The matters which are subject to bargaining are those indicated by the definition of the term "collective agreement": "provisions respecting terms or conditions of employment or the rights, privileges or duties of the employer...., the trade union or the employees (section 1, subsection 1, clause c).

"During the bargaining, the trade union must be represented by a bargaining committee consisting of two or more employees of the employer (one employee when the bargaining unit consists of not more than 15 employees), as well as officers or officials of the trade union (section 12, subsection 1,





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clause a, and section 12, subsection 2). However, the Board, if it is satisfied that the employer has engaged in unlawful practices which make it impossible for the trade union to be represented as provided above may authorize the trade union to be represented by a bargaining committee consisting of one or more officers or other representatives of the trade union who are not employees of the employer (section 12, subsection 3).

"Failure to bargain in good faith and make every reasonable effort to make a collective agreement is an offence under the Act (section 11 and section 61) and, upon consent in that behalf being given by the Board (section 65), the offender may be prosecuted. This remedy for failure to bargain is resorted to only in rare instances. The course usually followed is for the aggrieved party to seek conciliation services, i.e., "the services of a conciliation officer and, if necessary, a conciliation board" (section 1, subsection 1, clause d).

#### CONCILIATION

"In numerous instances, the parties resolve their differences through their own efforts and conclude a collective agreement without invoking the assistance of any outside agency. However, where 35 days have elapsed from the giving of the written notice of desire to bargain, either party may file with the





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Board an application requesting that conciliation services be made available to the parties (section 13, subsection 1); application for conciliation services may be made before the expiration of the 35 day period where the two parties join in the request or if no progress in bargaining is being made (section 13, subsection 2). If the conditions precedent to the making of the application have been satisfied (i.e., certification, written notice, presence of a bargaining committee and time limits), the Board must grant the request for conciliation services, but it may postpone final disposition of the application from time to time and direct the parties to continue to bargain in the meantime (section 13, subsection 1). The Board may grant the request for conciliation services, notwithstanding the failure of the trade union to satisfy the conditions precedent regarding the giving of notice or the attendance of a properly constituted bargaining committee, if despite such failure the parties have nevertheless met and bargained (section 13, subsection 1a).

"Where the Board grants a request for conciliation services, the Minister is required to appoint a conciliation officer to confer with the parties and endeavour to effect a collective agreement (section 14, subsections 1 and 2). The conciliation officer is required to report the







result of his endeavour to the Minister within 14 days from his appointment (section 14, subsection 2), but the period may be extended by agreement of the parties or by the Minister upon advice from the conciliation officer that a collective agreement may be made within a reasonable time if the period is extended (section 14, subsection 3). Failure of a conciliation officer to report to the Minister within the time limits set out above does not invalidate the proceedings of the conciliation officer (section 29). No information or material furnished to or received by a conciliation officer under the Act and no report of a conciliation officer may be disclosed except to the Minister, the Deputy Minister of Labour or the chief conciliation officer of the Department of Labour (section 72, subsection 2).

"If the conciliation officer is unable to effect a collective agreement within the time limits set out in the previous paragraph, the Minister has a discretion to adopt one of two courses: (a) he may appoint a conciliation board (section 15, clause a), or (b) he may notify the parties in writing that he does not deem it advisable to appoint a conciliation board (section 15, clause b). If the Minister chooses the first of these alternative courses, he must request each of the parties in writing to recommend,





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within 5 days, one person to be a member of a conciliation board. Upon receipt of the recommendations, the Minister appoints two members who represent the points of view of the respective parties. The two members so appointed have 3 days to recommend jointly a third member of the Board who is to be the chairman. Upon receipt of the recommendation, the Minister appoints the chairman. The Minister has authority to appoint on his own initiative either a representative" member of a conciliation board or the chairman, if he does not receive the requisite recommendations within the time limits set out above (section 15, clause a).

"When the members of a conciliation board have been appointed, the Minister is required to give notice of their names to the parties (section 17, subsection 1) and to deliver to the chairman of the conciliation board a statement of the matters referred to the conciliation board (section 19). The function of a conciliation board is to endeavour to effect agreement between the parties on the matters referred to it (section 21). A conciliation board is required to report its findings and recommendations to the Minister within 14 days from the appointment of the chairman (section 27, subsection 1), but the period may be extended by agreement of the parties or by the





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Minister upon advice from the conciliation board that a collective agreement may be effected if the period is extended (section 27, subsection 2). Failure of a conciliation board to report to the Minister within the time limits set out above does not invalidate the proceedings of the conciliation board or terminate its authority (section 29). On receipt of the report of the conciliation board, the Minister is required to forward a copy of the report forthwith to each of the parties (section 27, subsection 4). However, the Minister may before doing so direct the conciliation board to clarify or amplify any part of the report and the report is not deemed to have been received by the Minister until it has been so clarified or amplified (section 27, subsection 3)."

THE CHAIRMAN: Would you carry on from there, Mr. Jackson?

MR. JACKSON:

"THE COLLECTIVE AGREEMENT

"Mandatory provisions in collective agreements:

"Although in the main the contents of collective agreements are matters for the parties themselves, the Act makes the inclusion of certain provisions mandatory. Every collective agreement must provide that (a) the trade union that is a party thereto is recognized as the exclusive bargaining agent of the employees in the bargaining







unit defined therein (section 30, subsection 1), and (b) there will be no strikes or lock-outs so long as the agreement continues to operate (section 31, subsection 1). If a collective agreement does not contain such provisions, the Board may add them to the agreement at any time upon the application of either party (section 30, subsection 2, and section 31, subsection 2).

Operation and enforcement of collective agreements;

"A collective agreement is binding, subject to and for the purposes of the Act, upon the employer and upon the trade union that is a party to the collective agreement, whether or not the trade union is certified, and upon the employees in the bargaining unit defined in the agreement (section 35). Although the Act does not provide for the certification of multi-employer units, i.e., bargaining units consisting of the employees of more than one employer, nevertheless provision is made for an employers' organization (defined as an organization of employers formed for purposes that include the regulation of relations between employers and employees (section 1, subsection 1, clause e)) voluntarily entering into a collective agreement with a trade union and such a collective agreement is binding upon those employers who were members of the employers' organization at the time the collective agreement was entered into and on whose behalf the





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employers' organization bargained with the trade union (section 36, subsection 1). If any such employer ceases to be a member of the employers' organization during the lifetime of the collective agreement, he is deemed, despite his withdrawal from the organization, to be a party to a like agreement with the trade union (section 36, subsection 1). Similar provision (section 36, subsection 3) is made in respect of a collective agreement between an employer and a council of trade unions (defined as including an allied council, a trades council, a joint board and any other association of trade unions (section 1, subsection 1, clause dd)). In this connection, it should be noted that there are special provisions as to the giving of notice concerning the employers or trade unions on whose behalf bargaining is being conducted and as to the composition of the bargaining committee where the parties involved are groups of employers, employers' organizations or councils of trade unions (section 36, subsections 2 and 4, section 12, subsection 1, clauses b, c and d).

"The Act sets out a special procedure for the enforcement of collective agreements. Every collective agreement must contain a provision for the final settlement by arbitration, without stoppage of work, of all differences between the parties arising from the interpretation, application,





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administration or alleged violation of the collective agreement, including any question as to whether a matter is arbitrable (section 32, subsection 1). If a collective agreement does not contain such a provision, it is deemed to contain a "model" clause set out in the Act. Under this clause, a tripartite arbitration board is to be established, one member to be nominated by each of the parties with a third person, the chairman, selected by the "representative" members (section 32, subsection 2). Provision is made for appointments to be made by the Minister in default of appointments by either of the parties or in case of failure by the "representative" members to agree on a chairman (section 32, subsections 2 and 3a). The Act empowers the Board in certain circumstances to modify the arbitration provision in a collective agreement or the model clause itself, but the modification must conform with the general principles of the section (section 32, subsection 3). The decision of an arbitrator or an arbitration board is binding upon the parties to the agreement as well as upon the employers, trade unions and employees who are covered by the agreement and who are affected by the decisions. The Act declares that such parties, employers, trade unions and employees shall do or abstain from doing anything required of them by the







decision (section 32, subsection 4). Failure to comply with the decision of an arbitrator or arbitration board is an offence punishable on summary conviction (section 61 subsection 1), provided consent to the institution of a prosecution is given by the Labour Relations Board (section 65). Although, under The Arbitration Act, decisions of arbitrators and arbitration boards are subject to review by the courts, that Act does not apply to decisions of arbitrators and arbitration boards under The Labour Relations Act (section 32, subsection 5).

Duration of collective agreements:

"A collective agreement must operate for a minimum period of one year from the date when it commenced to operate (section 37, subsection 1). If there is no duration clause in a collective agreement, or if the collective agreement provides for an unspecified term or for a term of less than one year, it is deemed to operate for the minimum period of one year (section 37, subsection 1). On the other hand, the parties may not terminate an agreement, even by mutual consent, before it has run its full course, unless the consent of the Board in that behalf is first obtained . on the joint application of the parties (section 37, subsection 3). However, the parties are permitted at any time by mutual consent to revise any







provision of a collective agreement other than the "duration" clause (section 37, subsection 4). In addition, they may also extend an existing agreement, or any of its terms, for a period of less than one year while they are renegotiating the agreement (section 37, subsection 2).

#### RENEGOTIATION OF COLLECTIVE AGREEMENTS

"The expiration of the term of a collective agreement or the termination of a collective agreement by one of the parties does not, in itself, put an end to the bargaining rights of the trade union concerned, nor does it put an end to the obligation of the employer and the trade union to bargain with one another for the renewal of the collective agreement or the making of a new collective agreement. Either party may give to the other written notice, either within the period of two months before the collective agreement ceases to operate or within the period set by the collective agreement itself, of its desire to renegotiate the collective agreement (section 38, subsections 1 and 2). Special provision is made for the giving of notice where one of the parties to the collective agreement is an employers' organization or a council of trade unions (section 38, subsections 3 and 4). When notice of desire to renegotiate has been given, the parties are required to bargain in good faith and make every





reasonable effort to make a collective agreement, as is the case following the giving of notice of desire to bargain given by a trade union following certification (section 39). The provisions of the Act summarized above under NEGOTIATION OF COLLECTIVE AGREEMENT and CONCILIATION (pp. 6 ff.), are applicable to the bargaining following the giving of notice of desire to renegotiate a collective agreement (section 39). There is no provision in the Ontario Act which would require the Labour Relations Board to refer to the Minister for conciliation a dispute between the parties arising, during the lifetime of a collective agreement, out of a "reopener" clause in the collective agreement, i.e., a dispute with reference to the revision of a provision of a collective agreement that by the provision of the collective agreement is subject to revision during the term of the collective agreement.

#### TERMINATION OF BARGAINING RIGHTS

"The Act makes provision for the termination of bargaining rights of an incumbent trade union in the following circumstances:

- (1) upon the certification by the Board of another trade union as bargaining agent for the employees concerned, i.e., upon displacement of the incumbent trade union; or
- (2) upon the Board making a declaration that the





incumbent trade union no longer represents the employees in the bargaining unit, sometimes referred to somewhat inaccurately as decertification .

(1) In a displacement case, the applicant trade union must establish that it has not less than 45% membership in the bargaining unit (see above, pp. 4 ff., ACQUISITION OF BARGAINING RIGHTS). Normally in such a case the policy of the Board has been to direct that a representation vote be taken, the names of the applicant trade union and the incumbent trade union both appearing on the ballot. The incumbent trade union will be displaced only if more than 50% of the ballots of all those eligible to vote are cast in favour of the applicant trade union. (For determination of number of eligible voters, see above, p. 5).

(2) An application for a declaration terminating bargaining rights may be filed:

(a) by any of the employees in the bargaining unit if they produce evidence in writing that a majority of the employees have signified in writing that they no longer wish to be represented by the trade union (section 41, subsection 1). In such a case, the Act provides that the Board after having ascertained that a majority have so signified, must direct







that a representation vote be taken, unless the incumbent trade union informs the Board that it does not desire to continue to represent the employees in the bargaining unit, in which event the Board may issue a declaration terminating the bargaining rights of the trade union without conducting a representation vote (section 4, subsections 3 and 4). If a representation vote is directed, the bargaining rights of the incumbent trade union will be terminated only if more than 50% of the ballots of all those eligible to vote are cast in opposition to the incumbent trade union (section 41, subsection 4); employees absent from work during voting hours who do not cast their ballots are not included in calculating the number of eligible voters (section 41, subsection 5);

- (b) by any person, or the Board may act on its own initiative, where a trade union has obtained a certificate by fraud (section 42);
- (c) by the employer or by any of the employees:
  - (i) if the trade union after certification has failed to give notice of

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- desire to bargain within 60 days following certification, or
- (ii) if neither party has given notice of its desire to renegotiate the collective agreement within the two month period prior to the date the agreement ceases to operate, or
  - (iii) if the requisite notice has been given but the trade union fails to commence bargaining within 60 days from the giving of the notice, or
  - (iv) if bargaining has commenced but, before conciliation services are granted, a period of 60 days has elapsed without any attempt to bargain being made by the incumbent trade union (section 43).

If the failure to give notice or to bargain, as the case may be, is established, the Board may declare the bargaining rights of the incumbent trade union to be terminated forthwith or it may seek confirmatory evidence of the wishes of the employees concerned by directing that a representation vote be taken (section 43). If a representation vote is directed, the principles applicable to the vote are the same as those applicable





to a representation vote in respect of certification (see above pp. 5 ff., ACQUISITION OF BARGAINING RIGHTS) and of a vote directed in connection with an application for termination of bargaining rights filed by employees (see pp. 16-7 above).

"With a view to reconciling the interest in free choice of a bargaining agent with the interest of stability in industrial relations, the Act provides that applications for certification or for declarations terminating bargaining rights, which may have the effect of displacing an incumbent trade union, may only be made at stated intervals, except where there is an allegation of fraud (see section 42), or of failure by the incumbent trade union to exercise its rights for specified periods (see section 43 p. 17, above), in which cases the application may be made at any time, subject to whatever bar the Board may impose against repeated unsuccessful applications (section 67, subsection 2, clause h).

"The periods during which no applications may be made are commonly referred to in this jurisdiction as the "closed season"; the periods during which applications may be made are referred to as the "open season". Generally speaking, in the case of an initial certification, if no





collective agreement is entered into, the "closed season" runs for 12 months from the date of certification (section 41, subsection) and, where a request for conciliation services has been granted, if the conciliation process has not been completed within the 12 months (i.e., either by the Minister notifying the parties that he does not deem it advisable to appoint a conciliation board or, where a conciliation board is appointed, by the Board reporting to the Minister: see above p.9), until 30 days after the conciliation process has been completed (section 44, subsection 1). If a collective agreement is made, the Act contemplates that there will be an "open season" of at least 2 months' duration in each 12 month period during the lifetime of the collective agreement (section 40, subsections 1, 2 and 3, section 41, subsection 2). Where a collective agreement has been entered into, and the parties are renegotiating the collective agreement, and the Board has granted a request for conciliation services, a "closed season" commences to operate on the granting of the request and the termination of the agreement. The duration of this "closed season" is determined by principles similar to those applicable where conciliation is granted after an initial certification (section 44 subsection 2).







Where an incumbent trade union is displaced upon the certification of another trade union or where the bargaining rights of an incumbent trade union are terminated by a declaration by the Board that the incumbent trade union no longer represents the employees in the bargaining unit, the incumbent trade union forthwith ceases to represent the employees and any collective agreement to which the incumbent trade union is a party ceases to operate, so far as it affects the employees in the bargaining unit concerned in the certification or declaration (section 40, subsection 4; section 41, subsection 6; section 42; section 43)."

THE CHAIRMAN: Thank you, Mr. Jackson. Mr. Wren, would you take over?

MR. WREN:

SUCCESSION TO BARGAINING RIGHTS

"Where an incumbent trade union merges or amalgamates with another trade union, or jurisdiction over an incumbent trade union is transferred to another trade union, the latter may succeed to the rights, privileges and duties of the incumbent trade union. If any question arises as to the right of a trade union to act as a successor, the Board may, on the application of any person or trade union concerned, (a) declare the successor has acquired the rights of the





predecessor, or (b) declare that the successor has not acquired the rights of the predecessor, or (c) dismiss the application (section 44a, subsection 1). Before issuing a declaration, the Board may require that a representation vote be taken (section 44a, subsection 2). Where the Board makes an affirmative declaration, the successor is conclusively presumed to have acquired the rights, privileges and duties of the predecessor trade union, whether under a collective agreement or otherwise (section 44a, subsection 3). In other words, if there is a collective agreement in effect between the employer and the predecessor trade union, the successor trade union is substituted as a party to the agreement for the predecessor trade union; if the predecessor trade union is in process of negotiating a collective agreement with the employer, the successor trade union is substituted as the bargaining agent of the employees concerned for the predecessor trade union.

#### UNFAIR PRACTICES

"To reinforce the basic principles of the legislation, the Act prohibits certain courses of conduct which have come to be known as "unfair practices". These practices may be dealt with under two heads: (1) those that relate to freedom of organization; and (2) those that relate to the bargaining process.





(1) The Act declares that every person is free to join a trade union of his own choice and to participate in its lawful activities (section 3). No employer, and no person acting on behalf of an employer, may

- (a) refuse to employ, discharge or discriminate against any person because that person is a member of a trade union or is exercising any other rights under the Act; or
- (b) impose any condition of employment seeking to restrain a person from becoming a member of a trade union or exercising any other rights under the Act; or
- (c) seek by threat of dismissal or any other kind of threat or any other means to compel a person to become or refrain from becoming or to continue to be or to cease to be a member or officer of a trade union or to exercise any other rights under the Act (section 47).

In addition, no person, i.e., whether he be an employer or any other person, may seek by intimidation or coercion to compel any person to become or refrain from becoming or to continue to be or to cease to be a member of a trade union (section 48, subsection 1). Since this provision







might have the effect of preventing an employer taking disciplinary action against a person who takes up an employee's working time in carrying on organizing activity on behalf of or in opposition to a trade union, the Act declares that nothing in the Act is to be deemed to authorize any person to attempt at the place at which any employee works to persuade him during his working hours to become or refrain from becoming or continuing to be a member of a trade union (section 48, subsection 2). In addition, notwithstanding the foregoing provisions, the Act permits an employer and a trade union to include in a collective agreement provisions for requiring as a condition of employment, membership in the trade union, or granting a preference of employment to members of the trade union (section 33, subsection 1, clause a). However, an employer is forbidden to discharge an employee who is expelled or suspended from membership in the trade union solely because he is a member of another trade union (section 33, subsection 2). For the purposes of the Act no person is deemed to have ceased to be an employee by reason only of his ceasing to work for his employer as the result of a lock-out or strike or by reason only of his being dismissed by his employer contrary to the Act or to a collective agreement (section 1, subsection 2).

"No employer and no person acting on behalf of





30 an employer may participate in or interfere with the formation or administration of a trade union or contribute financial or other support to a trade union (section 45). In furtherance of the principle of this provision, the Board may not certify any trade union if any employer has participated in its formation or administration or has contributed financial or other support to it (section 9) and, in addition, an agreement between any employer and a trade union is not to be deemed to be a collective agreement for the purposes of the Act if any employer has participated in the formation or administration of the trade union or has contributed financial or other support to it (section 34, clause a). However, the Act does permit an employer and a trade union to include in a collective agreement provisions

- (a) permitting an employee who represents the trade union to attend to the business of the trade union during working hours without loss of earnings; and
- (b) permitting the trade union to use the employer's premises for the purposes of the trade union without payment therefor (section 33, subsection 1, clause b and c).

"To prevent an employer and a rival trade union derogating from the rights of an





incumbent trade union, the Act provides that, so long as the incumbent union continues to be entitled to represent the employees in a bargaining unit, no employer or other trade union shall bargain with one another or enter into a collective agreement on behalf of, or purporting, designed or intended to be binding upon the employees in the bargaining unit or any of them (section 47a).

"The Act, by implication, makes unlawful the "organizational strike", i.e., a strike called to compel an employer to recognize as bargaining agent for his employees a trade union which has not been certified by the Board; it also, by implication, makes unlawful a lock-out instituted by an employer to counter the efforts of a trade union to organize his employees (see section 49).

"The Act also declares that every person is free to join an employers' organization of his own choice and to participate in its lawful activities (section 4). No person may seek by intimidation or coercion to compel any person to become or refrain from becoming or to continue to be or to cease to be a member of an employers' organization (section 48, subsection 1). No trade union and no person acting on behalf of a trade union may participate in or interfere with the formation or administration of an employers' organization or contribute financial or other





support to it (section 46).

(2) During the period of bargaining for a new collective agreement, as well as during the period that a collective agreement is being re-negotiated, and until seven days have elapsed after the conciliation process has been completed, no employee may strike and no employer may lock out his employees (section 49, subsection 2). The term "strike" is defined as including "a cessation of work, a refusal to work or to continue to work by employees in combination or in concert or in accordance with a common understanding, or a slow-down or other concerted activity on the part of employees designed to restrict or limit output" (section 1, subsection 1, clause h). The term "lock-out" is defined as including "the closing of a place of employment, a suspension of work or a refusal by an employer to compel or induce his employees, to refrain from exercising any rights or privileges under (the) Act or to agree to provisions or changes in provisions respecting terms or conditions of employment or the rights, privileges or duties of the employer... the trade union or the employees" (section 1, subsection 1, clause f). To prevent either party taking unfair advantage of the other during the period of bargaining as outlined above, when resort to the strike and







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lock-out weapons is prohibited, the Act declares that the status quo must be preserved throughout that period except where departures from the status quo are mutually agreed upon by the employer and the trade union (section 53, subsection 1).

If an employer and a trade union enter into a collective agreement, no employee bound by the collective agreement may strike and no employer bound by the collective agreement may lock-out such an employee (section 49, subsection 1). As has already been pointed out (see pp.12ff), all differences between the parties arising from the interpretation, application, administration or alleged violation of the collective agreement, are to be disposed of by arbitration (section 32).

No trade union may call or authorize an unlawful strike and no officer, official or agent of a trade union may counsel, procure, support or encourage an unlawful strike (section 50). No employer may authorize an unlawful lock-out and no officer, official or agent of an employer may counsel, procure, support or encourage an unlawful lock-out (section 51).

"There is a saving clause in the Act which provides that nothing in the Act is to be deemed to prohibit any suspension or discontinuance for cause of an employer's operations or the quitting of employment for cause if the suspension, discontinuance or quitting does not constitute a





lock-out or strike (section 52).

#### REMEDIES FOR UNFAIR PRACTICES

"The Act provides that every person, trade union, council of trade unions, or employers' organization that fails to comply with or contravenes any provision of the Act or any decision, order, direction, declaration or ruling made under this Act or is guilty of an offence and on summary conviction is liable to the following penalties:

- (a) if an individual, to a penalty of not more than \$100; or
- (b) if a corporation, trade union, council of trade unions or employers' organization, to a penalty of not more than \$1000 (section 61, subsection 1).

Every day's failure so to comply is deemed to constitute a separate offence (section 61, subsection 2). If a corporation, trade union, council of trade unions or employers' organization is guilty of an offence under the Act, any officer, official or agent thereof who assented to the commission of the offence is deemed a party to and guilty of the offence (section 63). To meet common-law principles that certain entities lack legal status, the Act declares that a prosecution against a trade union, council of trade unions or employers' organization may be instituted in the name of the trade union, council of trade unions or employers'





organization may be instituted in the name of the trade union, council of trade unions or employers' organization, and the acts of an officer, official or agent of such an entity within the scope of his authority to act on behalf of such an entity is deemed to be the act of the entity (section 64). Subject to one exception (see below pp. 28-9), no prosecution for an offence under the Act may be instituted except with the consent in writing of the Board (section 65). In this connection also, to meet the common-law view that a trade union lacks legal capacity, the Act makes it clear that a trade union is an entity which may apply to the Board for consent to institute a prosecution and that, if consent is given, the information may be laid by an officer, official or member of the trade union (section 65, subsection 2). In the case of an alleged breach of the provision for the maintenance of the status quo during the period of bargaining (see p.25 above), the Act provides an alternative remedy by arbitration, where the parties are re-negotiating a collective agreement, as in the case of differences that arise during the lifetime of a collective agreement (section 53, subsection 2).

"The Board has no authority to issue 'cease and desist' or 'compliance' orders. However, any person who alleges that he has been refused employment, discharged, discriminated against, threatened,







coerced, intimidated or otherwise dealt with contrary to the Act, may complain to the Minister, whereupon the Minister may appoint a conciliation officer to inquire into the complaint and endeavour to effect a settlement of the matter complained of (section 57, subsection 2). The report of the conciliation officer is protected against disclosure to any one except the Minister, the Deputy Minister and the chief conciliation officer of the Department of Labour (section 72, subsection 2). If the conciliation officer is unable to effect a settlement, the Minister may appoint a commissioner with wide powers of inquiry (section 56, subsections 1 and 2). If the commissioner finds that the complaint is supported by the evidence, he is required to recommend to the Minister the course that ought to be taken with respect to the complaint, which may include reinstatement with or without compensation for loss of earnings and other benefits (section 58, subsection 3). After a commissioner has made his recommendations, the Minister may direct him to clarify or amplify any of his recommendations (section 58, subsection 4). The Minister is required to issue whatever order he deems necessary to carry the recommendations of the commissioner into effect and the order is final and must be complied with in





accordance with its terms (section 58, subsection 5). Failure to comply with such an order is an offence punishable on summary conviction (section 61), but the consent of the Board is not necessary as a condition precedent to the institution of a prosecution for non-compliance with such an order.

"Where a trade union or council of trade unions calls or authorizes an unlawful strike, where employees engage in an unlawful strike, or where an employer or an employers' organization calls or authorizes an unlawful lock-out, the aggrieved party may apply to the Board and the Board may declare that the strike or lock-out, as the case may be, is unlawful (sections 59 and 60).

#### MISCELLANEOUS PROVISIONS

"There are a number of miscellaneous provisions in the Act governing the actions of persons subject to the Act. Every party to a collective agreement is required to file with the Board a signed copy of the collective agreement (section 54). The Board may direct any trade union, council of trade unions or employers' organization to file with the Board a copy of its constitution and by-laws and a statutory declaration setting forth the names and addresses of its officers (section 55). Every publication that deals with the relations between employers or employers' organizations and trade





unions or employees must bear the names and addresses of its printer and its publisher (section 56). An agreement between an employee and a trade union which discriminates against any person because of his race or creed is deemed not to be a collective agreement for the purposes of the Act (section 34, clause b).

#### THE LABOUR RELATIONS BOARD

"The Act continues the Ontario Labour Relations Board (section 66, subsection 1), which was first established in 1944. The Board is now composed of a chairman, a vice-chairman, 2 members representative of employers and 2 members representative of employees, all of whom are appointed by the Lieutenant-Governor in Council (section 66, subsection 2). A quorum consists of either the chairman or the vice chairman and one member representative of employers and one member representative of employees (section 66, subsection 7). The Board may sit in two divisions simultaneously (section 66, subsection 8).

"The Board is empowered to determine its own practice and procedure and, with the approval of the Lieutenant-Governor in Council, to make rules governing its practice and procedure, but it is required to give full opportunity to the parties to any proceedings to present their evidence and





make their submissions (section 66, subsection 10). The Board is authorized to exercise such powers and perform such duties as may be conferred or imposed upon it by or under the Act (section 67, subsection 1). Without limiting the generality of this authority, certain powers of the Board are specifically set out and may for convenience be dealt with under several heads. The Board is empowered:

- (a) to summon and enforce the attendance of witnesses and to compel them to testify and to produce documents, to administer oaths, to accept such evidence as the Board deems proper whether or not such evidence would be admissible in a court of law, to require employers to post notices in connection with the Board's proceedings, to enter upon premises and to interrogate persons as well as to conduct representation votes thereon (section 67, subsection 2, clauses a - f);
- (b) to authorize any person (almost invariably a member of the Board's staff of examiners) to exercise any of the powers set out in (a) above (section 67, subsection 2, clause g).
- (c) to refuse to entertain new application







by unsuccessful applicants or by any of the employees represented by unsuccessful applicants for a period not exceeding 10 months from the date of the dismissal of an unsuccessful application (section 67, subsection 2, clause h);

- (d) to determine the form in which evidence of membership in or objection to a trade union is to be presented (section 67, subsection 2, clause i);
- (e) where a bona fide mistake has been made, to amend the proceedings, upon such terms as may appear to the Board to be just, so that the proper person or trade union is substituted or added as a party to the proceedings or is correctly named (section 67a);
- (f) to determine the following matters, if any question arises in any proceeding:
  - (i) as to whether a person is an employer or an employee;
  - (ii) as to whether a person exercises managerial functions or is employed in a confidential capacity in matters relating to labour relations;
  - (iii) as to whether an organization is a trade union, council of trade unions





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or an employers' organization;

(iv) as to whether a collective agreement has been made or as to whether it is in operation or as to who the parties are or who are bound by it or on whose behalf it was made;

(v) as to whether a group of employees constitutes a bargaining unit;

(vi) as to whether the parties have bargained in good faith and made every reasonable effort to make a collective agreement;

(vii) as to whether a trade union represents the employees in a bargaining unit; or

(viii) as to whether a person is a member of a trade union (section 68, subsection 1, clauses a - g);

(g) to determine, if any question arises in the course of bargaining for a collective agreement or during the period of operation of a collective agreement, upon the question being referred to the Board, whether any person is an employee or a guard (section 68, subsection 2).

#### PRIVATIVE CLAUSES

"The Act declares that the Board shall have exclusive jurisdiction to exercise the powers conferred upon it under the Act and, without





limiting the generality of the foregoing, as to any of the matters listed in heads (f) and (g) in the previous section of this summary (see pp. 31-2), the Board's decision is final and conclusive for all purposes, although the Board, if it considers it advisable to do so, may reconsider any decision, order, direction, or ruling made by it and may vary or revoke any such decision, order, direction, declaration or ruling (section 68, subsections 1 and 2). The Act further declares that no decision, order, direction, declaration or ruling of the Board shall be questioned or reviewed in any court, and no order shall be made or process entered, or proceedings taken in any court, whether by way of injunction, declaratory judgment, certiorari, mandamus, prohibition, quo warranto, or otherwise, to question, review, prohibit or restrain the Board of any of its proceedings (section 69).

"When the Minister establishes a conciliation board and notifies the parties of the appointment, it is to be conclusively presumed that the conciliation board has been established in accordance with the Act, and the Act declares that no order shall be made or process entered or proceedings taken in any court whether by way of injunction, declaratory judgment, certiorari, mandamus, prohibition, quo warranto, or otherwise, to question the appointment of the







conciliation board or the appointment of any of its members, or to review, prohibit or restrain any of its proceedings (section 17, subsection 2). Where the Minister appoints a commissioner to inquire into a complaint that a person has been dealt with contrary to the Act and has notified the parties of such appointment, it is to be conclusively presumed that the commissioner was appointed in accordance with the Act and the Act declares that no order shall be made or process entered or proceeding taken in any court, whether by way of injunction, declaratory judgment, certiorari, mandamus, prohibition, quo warranto or otherwise to question the appointment of the commissioner, or to review, prohibit or restrain any of his proceedings (section 58, subsection 1). Any order the Minister may issue calling upon any person to carry into effect the recommendation of a commissioner is final (section 58, subsection 5).

THE CHAIRMAN: Thank you, Mr. Wren. Gentlemen, you have had the benefit of the reading of both of these documents, the Antecedents of The Labour Relations Act of 1950, prepared by Professor Logan, and the Summary of the Provisions of The Labour Relations Act.

I might say at this stage that it is the ruling of the chair that proceedings of this Committee will commence each morning we sit at 11 o'clock, and we will adjourn not later than 4 o'clock in the afternoon. We still have approximately 55 minutes





this afternoon, so, if it is your desire to question any of the representatives of the Department of Labour, they are now prepared to answer any questions you may be prepared to ask.

I would suggest we proceed in an orderly manner, and that the questioning be taken over by one member of the Committee for **whatever** particular portion or portions of the Act he may be specifically interested in, and, after he has concluded, that some other member of the Committee might take up the questioning. I do not think it would be wise to have an order of questioning that would not be chronological, or out of order. Once a Committee member has directed whatever questions he has, unless he seeks the permission of the chair, no further questions on that particular subject should be permitted.

MR. YAREMKO: Mr. Chairman, perhaps we could just flip these pages over one by one and then go through the whole brief. I would not want to ask a question on something on page 9 if somebody else wants to ask a question on something on page 2.

MR. MACAULAY: That means, Mr. Chairman, rather than your way, to take it page by page rather than a member go through his entire routine. With respect, that might result in more chronology.

THE CHAIRMAN: Taking it page by page?

MR. MACAULAY: Yes.

THE CHAIRMAN: Yes.





MR. ROWNTREE: Mr. Chairman, I have some preliminary questions, and it seems to me the answers may fill in the background before you start the cross-examination.

THE CHAIRMAN: I am quite prepared to deal with them, Mr. Rowntree, but let us agree first upon the procedure we should follow here.

MR. MACDONALD: Page by page or section by section, I think, as it is broken down here.

THE CHAIRMAN: Well, that is in line with my idea of keeping the thing orderly.

MR. MACAULAY: Maybe section by section: That is, on page 3 there is a section starts and ends on page 4. It may be best to deal with the whole section rather than just page 3.

THE CHAIRMAN: Yes, I think that will be the proper way to proceed. Mr. Rowntree, did you have some preliminary questions?

MR. ROWNTREE: Yes, Mr. Chairman. I was going to ask, through you, of either the Deputy Minister or Professor Finkelman if they would state briefly any essential difference between the Ontario Act and the Dominion Act.

MR. FINKELMAN: The essential features of the Federal Act are set out in Professor Logan's summary on page 45. I don't know whether I would be prepared at this stage to give you a rundown of just what the differences are, but there will be a





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consolidation of all the provisions of any statutes in Canada relating to labour relations, presented in due course, and it will be in tabular form giving every section across the board. You will then have an opportunity of examining them in detail without any interpretation on our part as to what they mean. That should be ready for the fall session of this Committee.

MR. ROWNTREE: The second question I wish to direct, Mr. Chairman, through you, had to do with the Antecedents of the Labour Relations Act, which was entered into the record this morning: In the historical background in the United States I noticed various references to the Wagner Act, and I don't see any to the Taft-Hartley, and I wonder if someone would discuss that.

MR. FINKELMAN: An analysis of the provisions of the Wagner and the Taft-Hartley Act is being prepared and will be submitted to the Committee in the fall.

MR. JACKSON: May I ask a question, Mr. Chairman, too?

THE CHAIRMAN: Yes?

MR. JACKSON: Just to clear my own mind, does the Dominion Act -- and I know it is going to be broken down for us -- but does it take precedence over the Ontario Act, or do they work together?

MR. FINKELMAN: The Federal Act operates in its own federal sphere of jurisdiction, and the







Provincial Act operates under its jurisdiction.

MR. JACKSON: That will be shown in the breakdown in the fall?

MR. FINKELMAN: Well, it is a constitutional problem. Where the Federal Parliament has jurisdiction, the Federal Act would apply. Where the province has jurisdiction, the Act of this province applies. From time to time there are differences of opinion as to who has jurisdiction. There were two cases that have gone through the courts on that problem, involving cases in the Province of Ontario: One related to stevedores, and the other to uranium mines, in both of which the courts held the jurisdiction lay with the Federal Government, and the Ontario cases were dismissed.

MR. WREN: Mr. Chairman, with reference to this brief and the antecedents of the Labour Relations Act, by way of information, on page 3 some reference is made to the Ontario Railway and Municipal Board Act of 1906: Has that legislation been repealed?

MR. FINKELMAN: That has been repealed.

MR. WREN: It is of no effect now?

MR. FINKELMAN: It is of no effect today. I should correct my answer to say that the sections of the Act relating to labour disputes have been repealed.

MR. WREN: That is what I meant, yes.

THE CHAIRMAN: Any other general questions





before we proceed?

MR. MACAULAY: Mr. Chairman, this morning, I noticed on page 10 of the Antecedents, No. 4, the use of one-man commissions and of royal commissions to investigate the settlement of disputes: I remember the World War II legislation, but how did the use of one-man commissions -- is that referred to again here? How did that work out?

MR. LOGAN: That one-man commission came under R.S.O. 1950, Chapter 194, Section 4. It was used before that in connection with the old Disputes Investigation Act. It developed more or less as a speedy technique on the part of the Labour Relations Act, Section 3.

MR. MACAULAY: What success did they have, Professor Logan, in obtaining the goals it sought of speeding up the settlement of disputes?

MR. LOGAN: I think it had considerable success. It was incorporated in the Order in Council when the war came. I think the Order in Council first had a royal commission, and after a period of time they passed a second Order in Council, as an amendment to the first, in which it was made possible for one member of a commission to fulfill the expectation of a larger commission.

MR. MACAULAY: The reason I asked was that I had suggested some time ago that was perhaps one way conciliation could be speed up in this





province. I was wondering whether you felt it was, and justifiable during a so-called emergency -- for example, under peace, order and good government in wartime, and so forth.

MR. LOGAN: I think it was largely used in relation to discrimination cases where employers had discharged workers.

MR. MACAULAY: Somewhat comparable to our present legislation in relation to discrimination?

MR. LOGAN: Yes, on unfair practices.

MR. MACAULAY: But it wasn't used to settle disputes by way of one-man conciliation procedures?

MR. LOGAN: I would not say for sure whether it was not used in some degree in that latter category. I would suppose a conciliation officer probably was used rather than a commissioner.

MR. FINE: Mr. Macaulay and I handled about six of those things during the war.

MR. MACAULAY: There is no point in asking you at this stage to comment upon the advisability of that: It will come out at a later stage.

THE CHAIRMAN: Any other questions, gentlemen, before we proceed into the Act itself?

MR. MACAULAY: Could I ask, through you, Mr. Chairman; There is a document referred to as being prepared by Mr. Cohen which I would like to







read. It is on page 15 of the Antecedents of the Labour Relations Act:

"This document which, among other things, called for the establishment... " ---  
could I obtain a copy of that document?

THE CHAIRMAN:

"...to draft proposals for a new Order in Council.."?

MR. MACAULAY: Yes, I would like to read that if I could.

THE CHAIRMAN: Is it available, Mr. Logan?

MR. LOGAN: It looks to me here as if there is something which has been placed before the National Labour Supply Council at the hands of the Canadian Congress of Labour. I doubt whether I ever saw that document, myself.

MR. MACAULAY: Could our secretary attempt to obtain a copy of it?

THE CHAIRMAN: Could you tell us where we might obtain it, Professor?

MR. METZLER: Would it be acceptable, Mr. Chairman, if we asked the Department of Labour for Canada to see if they could locate it?

MR. MACAULAY: Certainly, as long as we get it.

MR. LOGAN: It was, as a matter of fact, the National Labour Supply Council, which only existed for a couple of years in wartime.

MR. MACAULAY: Mr. Chairman, there are





several other questions in connection with this morning's reading. Could I ask the professor, through you, sir, whether the comment at the top of page 31, which states:

"The judicial character of the Ontario Labour Court, however, as contrasted with the dependent status of the Wagner Board suggests a stronger enforcement mechanism."

Will the detail of that statement be made evident in the contrast or statements of these Acts? I would ask Professor Finkelman again.

MR. FINKELMAN: I don't think I would care to pass comment on that.

MR. MACAULAY: Perhaps I can come back to it, if it is not.

MR. FINE: I think that statement comes out of my own thinking. Mr. Wagner was having difficulties before it was constitutionally upheld. The Ontario Act, being enforced through the courts, did seem to be in a stronger position, and there was no defiance of its order.

MR. MACAULAY: That has no reference, then, Mr. Chairman, to the statement on page 35 that the Professor made,

"The Canadian Board therefore would classify as representative and part-time in contrast with the American full-time board of experts -- usually lawyers and economists".

Those two statements are not related?





THE CHAIRMAN: The statement you have just read refers to the Canadian Board, and the Professor was dealing with the Ontario Labour Court on page 31, not with the Canadian Board as established by the Dominion Government.

MR. MACAULAY: Yes, but he suggests at page 31 that there were some problems with reference to the enforcement mechanism, and I am wondering if the fact the American Board has full-time experts, lawyers and economists, whether these statements would be related in any way.

THE CHAIRMAN: I think the context would explain that the latter statement which you refer to deals with the Canadian Board as distinct from the Ontario Labour Court.

MR. MACAULAY: The American Board is a full-time board of experts, usually lawyers and economists: Is that right or wrong?

MR. FINE: The American Board, yes.

MR. MACAULAY: All right. Does the problem they have with reference to enforcement mechanism under the Wagner Board have anything to do with the fact that their board is composed of full-time experts, usually lawyers and economists?

THE CHAIRMAN: Quite likely.

MR. FINKELMAN: The two comments are entirely unrelated.

THE CHAIRMAN: That is what I thought.





MR. FINKELMAN: There is a factual statement with respect to the one, and a factual statement with respect to the other.

THE CHAIRMAN: Dealing with entirely different spheres.

MR. MACAULAY: That is all under that section, Mr. Chairman; thank you.

THE CHAIRMAN: Anything else, gentlemen? Does any other member of the Committee desire to ask any further questions on the Antecedents?

MR. YAREMKO: We have had the benefit of this reading, and it is an excellent digest, but the book might be well worth reading: I was wondering whether it would be proper to make a motion that a copy of that should be made available to each member of the Committee.

THE CHAIRMAN: A copy of Professor Logan's book?

MR. YAREMKO: Yes, Professor Logan's book. I don't guarantee I will read it in fairly short order, but it may be good, having had the digest of it, to be able to turn to the book itself.

THE CHAIRMAN: I don't know just what powers I have in that respect, Mr. Yaremko, but subject to what powers I may have, I would direct the secretary to supply each member of the Committee with a copy of Professor Logan's book.







Gentlemen, before getting into the questioning of the officials of the Department, it may be that you would consider it advisable to study the summary of the provisions as they have been given to us, and as they have been read, between now and our sitting tomorrow morning -- unless you have a certain set pattern you wish to follow.

MR. JACKSON: Can we go through it page by page?

THE CHAIRMAN: Would you like to do that now, or would you like to study it first?

MR. WREN: We could go over it once, and perhaps again tomorrow morning should questions arise.

THE CHAIRMAN: I presume we are through for the time being with the Antecedents of the Labour Relations Act, and we will now direct ourselves to the summary of the provisions of the Act, and each of you have been supplied with a copy of the Labour Relations Act itself.

Are there any questions with reference to anything appearing on page 2?

MR. MACAULAY: I have a question under "Acquisition Of Bargaining Rights": At the top of page 3 it states,

"With few exceptions, trade unions seeking recognition ...":





I was wondering how many obtain, in effect, certification by way of agreement without going before the Board? Is it common at all? Is it done at all?

MR. FINKELMAN: I am sorry I did not hear that question.

MR. MACAULAY: The statement on page 3 says,

"With few exceptions, trade unions seeking recognition from an employer as bargaining agent for his employees in the first instance nowadays apply to the board to be certified"; but, there is an alternative procedure -- or, rather, not a procedure, but by entering into a voluntary agreement, it is comparable to certification, and I was wondering what you mean by "with few exceptions"? Do you know how many they are?

MR. FINKELMAN: We have no information on that.

MR. MACAULAY: But you assume it is done mostly by certification?

MR. FINKELMAN: That is right. The odd case does come to our attention where recognition has been obtained voluntarily, but it is not very prevalent.

MR. MACDONALD: In this general section dealing with acquisition of bargaining rights, I have a question in relation to what falls within





the term "employee"? To take a specific case, last spring you will remember when we were discussing in the legislature this truckers' strike in Northwestern Ontario, one of the issues involved was the question of whether independent contractors can legitimately come under the Labour Relations Act. In the House the Minister indicated that in his opinion if this group of men had gone through the normal procedures and sought certification that their application would be entertained. My understanding was that up until now a group of people who were in the category of independent contractors, rather than direct employees of the employer, could not come under the Labour Relations Act. What is the position in that connection?

MR. FINKELMAN: The true independent contractor is not an employee and would not come under the provisions of the Act, but whether a person in any particular set of circumstances is or is not an independent contractor would depend on the evidence in the particular case. We have run up against that frequently in the logging camps, and we have to get the facts, and in some cases where it has been alleged that the people are independent contractors, we have found them to be employees, and in some cases we have found them to be independent contractors. Each case







turns on its own peculiar facts.

MR. MACDONALD: Isn't it true that we have emerging here a procedure which is separating out groups of employees, and they might then come under the category of independent contractors, and it is in many fields. For example, the people who operate the trucks to distribute throughout the city our daily newspapers, are, I understand, independent contractors.

MR. MACAULAY: Sand and gravel too.

MR. MACDONALD: Sand and gravel is also suggested: It seems to me that you have here a procedure whereby an employer can, by a slight alteration of the relationship between himself and a group of employees -- by putting them on a so-called independent contracting basis -- in effect deny these employees the rights they are entitled to under the Act. Am I right in saying this is emerging as a much more general problem beyond just the question of the logging camps up north?

MR. FINKELMAN: The problem has come up in a number of cases outside of logging. To say there is an emerging general pattern, I can only say we have before us at the present time three or four cases of that nature, but I can't tell you what the Board will decide in those cases. We have had cases in the past where contracting firms, for example, have let out carpentry work to three or





four people whom they described as independent contractors. The principles we have applied are very much the same there as we applied in the logging camps. In some cases we have found these so-called independent contractors are employees, and in some cases we have found that these people are independent contractors. As I said, it turns on the facts of the particular case.

MR. MACDONALD: For our purposes here, as a Committee on the legislature, it would be to examine whether or not the Act might be more specific, for guidance to the Labour Relations Board.

MR. FINKELMAN: That is up to the Committee. All the Board can do is determine whether the person is an employee or is not an employee.

MR. MACAULAY: With respect, I think that is one of the things that can be put on the list for the Committee to consider, as to whether there is any need for amendment to the Act.

MR. WREN: May I direct a question to Professor Finkelman, Mr. Chairman?

THE CHAIRMAN: Yes.

MR. WREN: I think we are dealing with what are normally called piece-workers, or people who do work at a certain unit price: In past experiences with the Board, when does a piece-worker,





or a person who is doing work for a stated price, cease to become a piece-worker and become a contractor? What general rule has been applied?

MR. FINKELMAN: There is no general rule because the method of payment is only one of the factors that can be taken into account. There are other things -- a great many factors -- and we can only determine on the balance of the evidence. The method of payment alone is never governing; it would be one of the factors to be considered. Other factors have to be considered: The degree of control of the employer over the employee; I would say, particularly if an employer exercises a high degree of control over the employee such as the time he reports and leaves; the quality of the work, and so on and so forth; or, if the employer pays workmen's compensation, and unemployment insurance and deducts income tax, and so forth, the probability -- and here again I am speaking only of probabilities, because we are dealing with hypothetical cases -- the probability is he would be regarded as an employee, but I am not prepared to tell you how many of these cases, if subtracted from the total, would lead the Board to find he was a contractor.

MR. WREN: But degree of control has been the dominant factor?

MR. FINKELMAN: It has been one of the





very important factors considered by the Board.

MR. JACKSON: Are there many of these cases that cost the Board a great deal of time in trying to decide? Is that a problem? Are there many of them?

MR. FINKELMAN: Yes, there are a considerable number.

MR. JACKSON: Could you be more specific than that? Would it take one-third of your time?

MR. FINKELMAN: Oh, no. We have an awful lot of work, and we cannot say that problem alone consumes one-third of our time. I might try, before the Committee continues in the fall, to run through the cases, say, for the past year, with the assistance of our economists, and see if I can pick out the number of cases in which this issue arose. That may give you some indication of how frequently the problem arises, but I certainly could not do it within the next few days. It would be a matter of examining every one of the 600 or 800 certification cases which we had last year.

MR. YAREMKO: Under what section do you exercise this jurisdiction, in the Act itself?

MR. FINKELMAN: In the first place, under section 5:

"A trade union may apply to the Board for certification as bargaining agent of the employees of an employer ...",







• and if the issue is whether a person is or is not an employee, then the issue is before us immediately. Our authority in that respect is reinforced by section 68:

'The Board shall have exclusive jurisdiction to determine whether ...

(a) as to whether a person is an employer or an employee" --

that is section 68 (1) (a).

MR. MACAULAY May I ask in connection with that on page 3: The Board determines how many employees of an employer there are to form the appropriate bargaining unit; it is in the centre of page 3. Also, you determine whether somebody is an employee. Could you give the Committee some indication of how you determine how many employees there are for the purpose of a bargaining unit in the applicant trade union?

MR. FINKELMAN: Yes, an application is filed with the Board; a copy of that application is sent by registered mail to the employer, and, accompanying that application -- and, incidentally, it also includes a notice of the date of the hearing -- there is a letter which requests the employer to file with the Board a list of his employees in the bargaining unit proposed by the union, and also a list of employees in the bargaining unit which the employer holds as





appropriate. So, we have in due course before us two parallel lists, if there is any disagreement. If there is no disagreement, it will be one list setting out the names of the employees. At the hearing the presiding officer of the Board -- the vice chairman or myself -- will announce the number of names on that list, and, if no exception is taken to it, then, it is assumed that is a proper list of employees. If, however, exception is taken to it, the Board will send an examiner to look over the employer's payroll and, if necessary, convene a meeting of representatives of the employer and the union to go over the list and indicate what challenges there may be. The status of the people challenged is set out in the examiner's report; he takes evidence on that, and a copy of the report is referred to both parties, and, if they don't challenge that report, that is the information upon which the Board reaches its conclusion. If it is challenged, there will be a hearing before the Board to give the parties an opportunity of a hearing before the Board.

MR. MACAULAY: But you could not tell solely from a man's books whether a man may be classified one way by the employer -- that does not necessarily mean he was excluded from a class.

MR. FINKELMAN: That may be so, but the employer is asked to produce his list showing the





occupational classification of every individual, and in 99 cases out of 100 we have no difficulty.

Perhaps 99 out of 100 is putting it too high, but, certainly in 90 cases out of 100 we have no difficulty. In the other 10 cases, someone raises a question, and the matter will be reviewed more formally.

MR. MACAULAY: What is your mechanism of determining whether a man is truly an employee, and, therefore, is eligible under the Act? What evidence do you hear, or how do you determine the status of a man?

MR. FINKELMAN: Whatever evidence the parties submit.

MR. MACAULAY: I mean, the mechanism of it? Do you receive affidavits, or do people come personally, or what do you do?

MR. FINKELMAN: We do not receive any affidavit evidence at all. It must be viva voce evidence. It is either done at a formal hearing of the Board, or a formal hearing at the situs, in which case it is done through an examiner who notifies the parties he will hold a hearing at the situs, and that the person whose status is in issue will be required to attend before him and submit to examination and cross-examination.

MR. MACAULAY: Does that same procedure apply in the cases of logging and truckers?

MR. FINKELMAN: That is right.







MR. YAREMKO: Towards the bottom of the page you say,

"The Board has complete discretion ...":

Was this printed after the case in which the decision was handed down where they reaffirmed section 68?

MR. FINKELMAN: It says,

"The Board has complete discretion ...".

That has always been the case. The case you refer to is one relating to the question whether the person is an employee or not, and involved the degree of supervision or review which the Board could exercise over the determination as to whether or not the person is an employee.

MR. YAREMKO: In the course of its judgment did it refer to the other subsections of the section, or just to the one particular item?

MR. FINKELMAN: I am afraid I will have to ask you to read the judgment itself. It is difficult to disentangle it and say it was one section.

MR. MACAULAY: Does that include that natural justice rule: That is to say, is that still reviewable?

MR. FINKELMAN: So far I have not yet found any legislature in the Commonwealth which has succeeded in ousting the jurisdiction of the courts to review the decision of any administrative tribunal on the ground that it has failed to observe the principles of natural justice. I know of only one case which has





come to my attention, and that is in the mobilization regulations during the war when the Order in Council said something to the effect that the decision of the administrative tribunal shall be deemed to be -- I just forget the exact language of it -- but that everything that the Board found was presumed to be correct; it went quite that far.

THE CHAIRMAN: Are there any other questions with reference to the acquisition of bargaining rights or application for certification?

MR. ROWNTREE: There is one item there, Mr. Chairman, I would like to direct to Professor Finkelman: A short while ago the Professor said that certification was granted invariably or usually by application rather than by consent.

MR. FINKELMAN: No. What I said was that usually bargaining rights are acquired by certification rather than by voluntary recognition without the intervention of the Board. There is nothing to prevent an employer sitting down with a trade union across the table, without coming to the Board at all, and arriving at the conclusion that the union represents the employees and the employer. That does not happen very frequently but it does happen, and has always happened, and, as far as our legislation is concerned, can go on happening.

MR. ROWNTREE: And, similarly, the same thing would apply when a contract is being





renegotiated, that if one of the parties -- either the company or the union -- want to extend the bargaining unit to include some other classification, if they agree on it, it goes by consent again?

MR. FINKELMAN: That is right, so long as that sort of recognition or inclusion in the bargaining unit by others does not infringe on the rights of any other trade union; parties can extend the bargaining unit in any way they see fit. That can be done voluntarily without the intervention of the Board.

MR. JACKSON: Mr. Chairman, am I right in saying the Board, on a certain classification that have to belong to the unit --- in other words, this unit we are dealing with -- and as we move along we speak about 55% membership ---

THE CHAIRMAN: Well, we haven't come to that yet.

MR. JACKSON: No, but I will come back to the application. I am trying to figure out how you determine a unit. What is the number that determines a unit? Do you determine that?

MR. FINKELMAN: A unit does not depend on numbers at all, except that a unit must be more than one person. For example, a union comes in and seeks application as bargaining agent of all employees of the John Doe Manufacturing Company: Now, the union will usually exclude office workers --





that is, separate office workers and production workers, because often they are not included in the same unit except in very rare circumstances. That has nothing to do with numbers. It is just the defining of a constituency. Just as in political constituencies, you divide up land into various parts, and you say, "This is a constituency". It does not depend on numbers at all. We are not interested in what numbers are at that stage. We are interested in defining a number of employees that will constitute the constituency. We will say, the employees in the plant at Toronto --because office workers, except the foremen, except other groups that the parties may agree to exclude, or who may have to be excluded ---

MR. JACKSON: But the Board do decide that?

MR. FINKELMAN: The Board itself decides that.

MR. SPOONER: Except, of course, if the trade union and employers have already agreed?

MR. FINKELMAN: They, themselves, then have established a unit, and we are not concerned.

MR. SPOONER: If they have made errors in the agreement and included persons in managerial capacities in the trade union, you don't attempt to correct that?

MR. FINKELMAN: No, except in respect







of an application under section 68, subsection 2, where there is an opportunity afforded to the employer or to the trade union in the proper case to come to the Board. So, if in the course of bargaining, with regard to a certain person, the Board will decide whether that person is or is not management. Let me give you an illustration: Say, in a small plant, the Board has excluded certain people, like the superintendent, because the only person representing management at the time of the application or at the time when the agreement was entered into was the superintendent; there was no one below the superintendent in the managerial class: This enterprise grows, say, tenfold, and they now have a group of people who are foremen, and the company says these people should be out of bargaining -- they should not be covered by the agreement. Well, the union says, "We have covered them because the description was, 'superintendent or persons above that rank'". However, there is an opportunity under section 68 for the employer to go to the Board and say, "These people now exercise management functions and should be excluded": The Board will have an inquiry and take the evidence, and if it comes to the conclusion they are management, then they are no longer employees. If we come to the conclusion they are not part of management, we will come to the conclusion that





they are employees, and the result will be ---

MR. MYERS: Could spot welders belong to one union and people running presses to another? Could you divide them up in the union within a plant?

MR. FINKELMAN: I say, generally speaking, the Board will not do that today. We do not upset established relations unless there is an attempt by another union to do that. Nowadays, as far as I can recall, we would not put spot welders in another union. We lean towards plant unit, excluding office staff unless there are special circumstances.

MR. MYERS: The plant would be together as one unit?

MR. FINKELMAN: Yes, except under special circumstances. There are a whole series of policies in certain industries.

MR. JACKSON: Is it correct that at no time does the Board worry about what union is going into a plant?

MR. FINKELMAN: The only time we do worry about is where an application is made for a craft unit under section 6, subsection 2. We do have to worry about the union: It has to be a craft union with a history of bargaining in craft units. Otherwise, we are not involved in the jurisdictional disputes.

MR. JACKSON: Would you not be involved





in the case Mr. Myers brought up? Might that not come forward where you would have conflicting unions?

MR. FINKELMAN: No, whatever union has the necessary number of employees will get the unit.

MR. JACKSON: Except where it comes under a craft unit?

MR. FINKELMAN: That is right, but we are only involved to this extent, that we will seek to ascertain whether that particular union has craft rights, and, if it has not craft rights, it goes out of the window.

MR. JACKSON: Regardless of what the people in the plant want?

MR. FINKELMAN: No. The people in the plant have already indicated.

MR. JACKSON: Yes, but if they want one that does not have craft rights, you will take the steps ---

MR. FINKELMAN: That is right. I will give you an illustration of a situation which arose in Northern Ontario recently: In the construction trades, normally, with very, very few exceptions -- just the odd case that arises otherwise -- organization is entirely on craft lines. A dispute arose between the hod carriers and the lumber sawmill workers unions as to which one would represent construction labourers at the Lakehead.







There are a number of factors I don't want to go into because they are not germane to our particular discussion, but let us assume that the lumber and sawmill workers came in and sought a bargaining unit with these contractors, and the hod carriers came in: The hod carriers by tradition have been recognized as having something equivalent to craft rights, and they are entitled to take the common building labourer. The "common building labourer" would exclude all the other crafts that are up there. On the other hand, the Lumber and Sawmill Workers Union, coming in as an industrial union in this particular case, have to take all the employees except the office employees. Now, taking a case involving the Foundation Company -- in fact, a series of cases involving them -- but taking the first case, we found after examining the facts that the Foundation Company at the particular, relevant time had no agreements with any of the building trades. We found that the bargaining unit under those circumstances covered all the employees of the Foundation Company. The Lumber and Sawmill Workers did not have enough cards in that overall unit. They were, therefore, dismissed. I should say, also, what they were really seeking at this time was to represent the common labourers, and they were under the impression at that time that the other unions were covering





the other crafts, and therefore the hod carriers were a sort of odd end. When they found the Finance Company did not have an agreement with other unions, there was an overall agreement covering all employees. Since they did not have craft history and they only had cards for hod carriers, they were dismissed. On the other hand, if the hod carriers had come in and sought a hod carriers' unit as common building labourers, general building labourers, with the same number of cards, they would probably in those circumstances have been certified. I have left out a few of the facts.

MR. MYERS: They would have been certified for the whole business?

MR. FINKELMAN: No, they would have been certified for the hod carriers alone.

MR. MYERS: And another union could come in for the rest, or part of the rest?

MR. FINKELMAN: Yes, depending on the circumstances.

MR. MACAULAY: Professor, in that connection, as between the lumber and sawmill people and the hod carriers, where does the jurisdictional committee of Washington come into an argument of that nature?

MR. FINKELMAN: We are not concerned with the jurisdictional capacity at all.

MR. MACAULAY: But are not the unions themselves? Don't they determine the issue as to who will go on before you?

MR. FINKELMAN: They may have certain rights.





There is a jurisdictional committee in some cases and they will be able to straighten out the dispute between the unions, whereupon the union that has not the jurisdiction will withdraw from the picture entirely, but we are not concerned with what the jurisdictional committee -- we will decide the case strictly on the evidence before us.

MR. MACAULAY: Can other circumstances arise -- a situation where a craft union should go in, and the jurisdictional committee in Washington may determine that the persons who should have the certification should be the non-craft union: What happens if that were to develop?

MR. FINKELMAN: They would have the power to discipline the union that did not obey their orders.

MR. MACAULAY: Say ~~that~~ was a craft union, and they withdrew and said, "Don't go ahead", and you have said, "We won't accept you because we want a craft unit"?

MR. FINKELMAN: We don't say that.

MR. MACAULAY: All right: There is nobody left but a non-craft union: You apply, and I thought you had a policy of craft unions in craft enterprises.

MR. FINKELMAN: No, if that is the impression you gathered, I have been misleading you. A craft union may apply and ~~stand~~ board on application by a craft union will have to establish a craft unit if the employees in the craft unit want a craft union; that





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union will be certified, and if a craft union does not apply for a craft unit, then anyone can have the employees.

MR. MACAULAY: So, you deal with who is left to apply, the Committee having made up its mind before it got to you?

MR. FINKELMAN: That is right. If we were to try and get involved in disputes between unions, we would have to double our staff.

THE CHAIRMAN: Are there any other questions under application for certification, gentlemen?

MR. JACKSON: I wonder if we could, if it is agreeable, Mr. Chairman, put that on the agenda for some later meeting where we could go into it more thoroughly. I still have a lot of questions in my own mind.

THE CHAIRMAN: Professor, probably you could prepare something for us in connection with our fall sittings in connection with craft units?

MR. FINKELMAN: I am prepared to answer questions, but I would not undertake to prepare anything.

MR. MYERS: Could you tell us now briefly?

MR. MACAULAY: Why don't we go on with that in the morning?

THE CHAIRMAN: It is now three minutes to four o'clock, gentlemen, and if we get into this very much further it is going to take us all evening.







I will now declare this session adjourned until eleven o'clock in the morning.

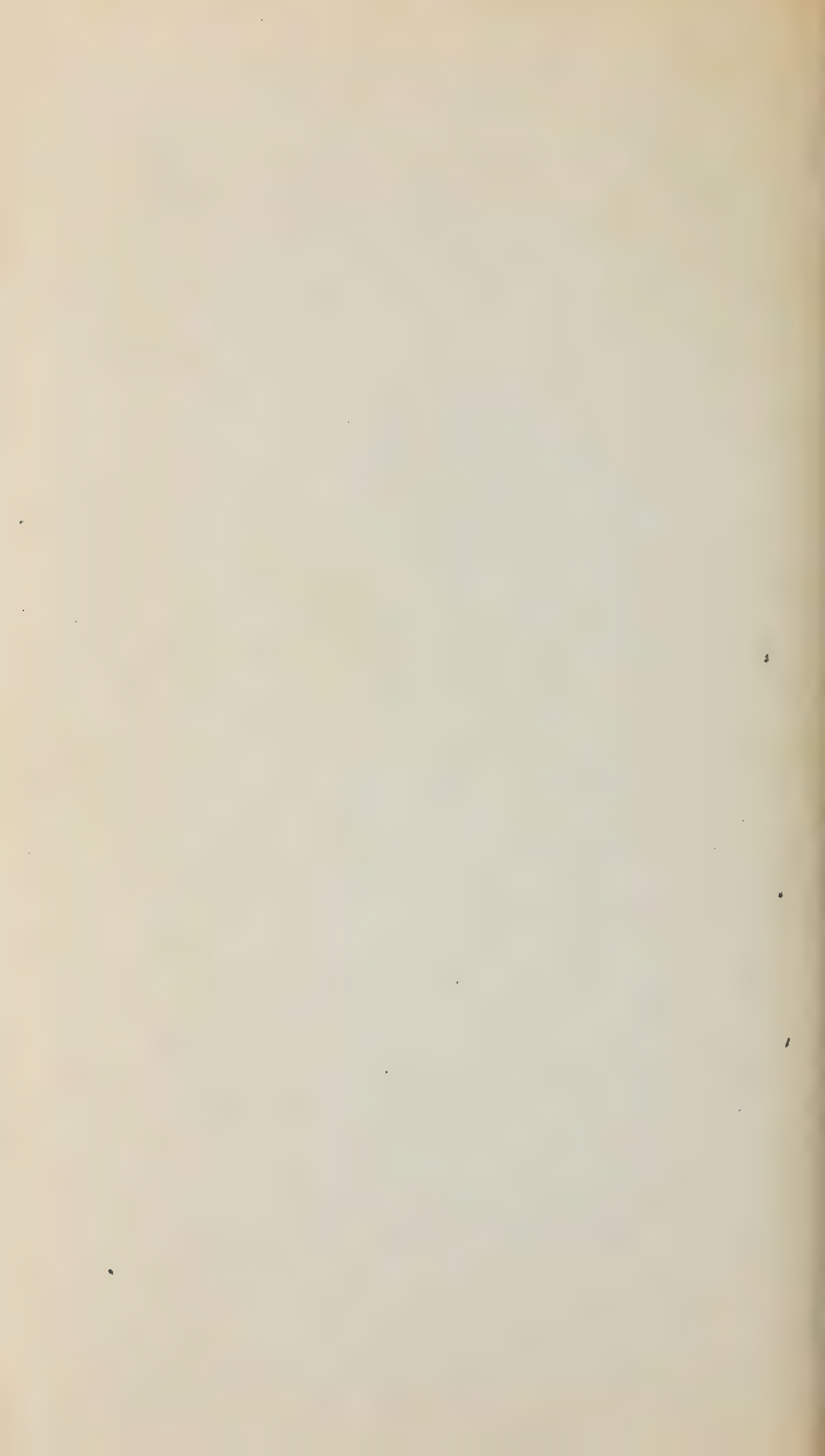
MR. MACDONALD: Mr. Chairman, the Sub-Committee is supposed to report in the morning, and I would like to know, what is our contract now with Angus Stonehouse and Company Limited? Is it for a specific number of copies to be delivered?

THE CHAIRMAN: The secretary will advise you as to that.

---The Committee adjourned at 4 P.M., until 11 o'clock tomorrow morning.







SPECIAL COMMITTEE ON LABOUR RELATIONS ACT

Volume 2

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LEGISLATIVE ASSEMBLY OF ONTARIOSELECT COMMITTEE ON LABOUR RELATIONS

Committee Room No. 1, Parliament Buildings  
Queen's Park  
Toronto, Ontario

Tuesday,  
June 25, 1957

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JAMES A. MALONEY

Chairman

HAROLD PERKINS

Secretary

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MEMBERS PRESENT:

G. E. Jackson  
Robert Macaulay  
Donald C. Macdonald  
Ellis P. Morningstar  
Raymond M. Myers  
Arthur J. Reaume  
W. Leslie Rowntree  
J. W. Spooner  
Albert Wren  
John Yaremko

APPEARANCES:

Hon. Chas. Daley	Minister of Labour
Mr. J. B. Metzler	Deputy Minister of Labour
Mr. Louis Fine	Chief Conciliation Officer
Mr. J. Finkelman	Chairman, Labour Relations Board
Mr. H. A. Logan	



THE CHAIRMAN: Gentlemen, we will come to order. Perhaps we could have the report on the matter of obtaining additional copies of the transcript of the record here. Is that Committee in a position to present its report as yet?

MR. YAREMKO: Not as yet. We may be in a position to report this time tomorrow, or failing that, at the next meeting.

THE CHAIRMAN: Well, if we conclude today what happens?

MR. YAREMKO: We will report at the very first meeting, the next subsequent meeting.

THE CHAIRMAN: Of course, there is a possibility that will not take place until September at which time we will be hearing witnesses and the briefs. I am afraid we will have to have a report -- if this sitting concludes today I think we should have a report.

MR. MACDONALD: Mr. Chairman, if I may cross-talk, what we are seeking is a quotation for a further number of copies. It may be possible to get it by noon today.

THE CHAIRMAN: Could you work on it at noon?

MR. YAREMKO: We will do our best and try to have it before the end of the day.

THE CHAIRMAN: Thank you. I think yesterday when we adjourned we were working on the application for certification and there was some question about craft units that had been brought to the attention of the departmental officials.



MR. SPOONER: There is something here that Professor Finkelman gave me that might answer it, but the question was asked by Mr. Myers who is not present this morning.

THE CHAIRMAN: Is there any member of the Committee, in the absence of Mr. Myers, to take up the topic of application for certification? We will revert back to that when Mr. Myers comes because there was something he wanted cleared up.

MR. MACDONALD: Yes, Professor Finkelman was discussing two or three aspects of the question of membership and application for certification. May I ask this question: Is it not the case that when the National Labour Board in the United States does define certain industries as being suitable for either craft units or industrial units there is some sort of link in this fashion, that there is between the two -- that has not been done in Canada, and why not?

MR. FINKELMAN: Well, I am not too sure I understand the question, Mr. Macdonald. The craft unit is entitled to craft rights if it fulfills the provision of Section 6, subsection 2. If it has the right of collective bargaining it will be entitled to craft rights.

MR. MACDONALD: Well, what exactly is the situation with regard to this? How do you define what is suitable for industrial, for craft unions in the United States?



MR. FINKELMAN: It is not a question of suitability, it is a question of the history of bargaining. In the United States I think the point you are making is that in some industries the Board at one stage or another refused to grant craft rights to craft unions. That was under the Wagner Act but under the Taft-Hartley Act there is a much stronger craft provision than in the Wagner Act. I have not a copy of the Taft-Hartley Act before me but I will try and get it at noon and perhaps I can give you a reply this afternoon.

MR. MACDONALD: One other question that is related to that: yesterday Mr. Finkelman was discussing the fact that office workers are separated out from the rest. This is a decision of the Board rather than in the Act; am I correct?

MR. FINKELMAN: That is right. It is a decision of the Board of the suitability of joining together persons in plant and persons in an office. The feeling of the Board has been right from the very beginning that their interests are of such a divergent nature, the bargaining is so different, working conditions are so different, that there should be separate bargaining on behalf of an office staff and on behalf of a plant operation.

MR. MACDONALD: Even if they want to be in the same union?

MR. FINKELMAN: Even if they want to be





in the same union. I am sorry, if they want to be in the same union they can be in the same union. Perhaps I should explain that somewhere around 1947 or thereabouts -- I was not a member of the Board at the time -- the decision was made by the Board, the Electric Auto Light case, in which the Board said the same union could not represent plant employees and office employees, that a different union would have to apply for office employees where the plant was already organized. My own feeling from the very beginning was that the decision was not in accordance with the law and after my return to the Board a number of decisions were established in which we served notice that we were going to reconsider the policy. In the Grey case about two years ago we issued another decision in which we held that a plant, the employees in the plant and the employees in an office, might be in the same union but normally they would be in separate unions. In other words, if the same union applied for a plant and office at the same time the employees would be split up into two units and there would be two certificates issued. That was based on our feeling, our belief, that the interests of the two groups were so divergent that they should not be dealing in the same bargaining session.

MR. MACDONALD: Just as a matter of curiosity, is there really any greater divergence between office workers and other people in the plant than



there is, for instance, between the various units in an amalgamated local?

MR. FINKELMAN: It is not a question of the amalgamated local. The bargaining would be carried on if you had the office and the plant in the same unit by people who would probably lean one way or another depending on the strength of the committee. That is the opinion of the Board, and I can assure you the decision runs along the same lines. . The workers are separate from the few other employees in an office; and that a plant be entirely separate is one of the decisions of a labour member of the Board. I am not revealing any confidences here because he has recorded his view in a written decision, the Grey case, and you can read it and see his views on the matter.

MR. MACAULAY: Professor, apart from the opinion that this member has expressed, is there really any greater difference between these workers and the total of the plant workers than there is between some sections of the plant and office?

MR. FINKELMAN: I can only point to the practice of all labour relations boards across this country and the United States as supporting the view that is carried on here today. They all take the same position. They all have the same view that office workers and plant workers normally should be separated.



MR. MACAULAY: Well, can you tell me a little about the experience of those things; the office workers on the average in large plants are members of unions?

MR. FINKELMAN: In a number of plants they are members of unions but the degree of organization among office workers is much less than the degree of organization among plant workers.

MR. MACAULAY: Of the number of plants, say, that are unionized, and the plant workers, say that number is 100 for an instance, what number of those same plants would have a union organization for their office workers?

MR. FINKELMAN: I could not tell you. We would have no way of knowing that because there may be partial recognition in many cases and it would be a very large undertaking to try and even get an estimate.

MR. MACAULAY: Does it ever lead to the possibility -- presumably if these workers are members of unions it very definitely could lead, could it not, to the plant being out on strike for two different issues at different times; is that possible?

MR. FINKELMAN: That may happen.

MR. MACAULAY: Does it happen?

MR. FINKELMAN: I should imagine it does happen.

MR. MACAULAY: And is it not possible





that it happens for the very reason, or for one of the reasons that plant and office workers are separate as to bargaining units?

MR. FINKELMAN: The same thing would be true wherever you had two unions representing any employees in the same enterprise.

MR. MACAULAY: Say they were the same unit, could their contracts not come up for renewal at different times? In short, does the likelihood of creating two bargaining units for these two different things in the same plant not increase the expense of the dispute?

MR. FINKELMAN: It is very hard to answer that question because it is impossible to say what would happen if both groups were bargaining at the same time. It is just as likely, for instance, that there would be no settlement of the issue over a longer period of time if you did not have the two units split up and one bargaining for its interests and the other bargaining for its interests.

MR. MACAULAY: I would have thought that the bargaining committee would have been representative of the members who were in the unit, and it may be that that is not always so; is that true?

MR. FINKELMAN: I cannot speak for what goes on at the bargaining table, I have no experience in that area.

MR. MACAULAY: You said that it may be



that the bargaining committee, as I understood you, a dissolution of what you say that the bargaining committee might not be representative of the views of the office workers and press more heavily perhaps for the plant workers. Is it not up to the office workers to see they have a just representation on their committee?

MR. FINKELMAN: The office workers constitute a breakdown of the whole enterprise and I do not know what form of proportion of representation you would work out to give them equal weight.

HON. MR. DALEY: Pardon me, are you suggesting there should be only one bargaining unit?

MR. MACAULAY: I am not suggesting anything, I am a curious young man and I am trying to learn something.

HON. MR. DALEY: We have operating engineers in a plant that are separately organized and on occasion they have struck the plant, and that was just recently here.

MR. MACAULAY: But that is their choice. There is no ruling of the Board which says, as I understand it, that they have to be separately represented whereas there is a separate rule that office workers have to be on a separate bargaining unit from the plant workers, so that is a slightly different situation.

MR. FINKELMAN: Perhaps I should make



this explanation, that there is nothing to prevent the employer if he sees fit to do so to make an agreement covering both the plant and the office in one agreement. If employers were interested in doing that I am sure they could work it out with the unions. There would not be, generally speaking, too much resistance from unions or too much resistance from employers. If both parties wish to do that they can to accommodate themselves. The fact they have rarely done that is an indication, I think, that both parties are reasonably happy with the solution we have worked out and it has been common both in this country and the United States.

MR. MACDONALD: Can we not also place the interpretation on it that the Board's decision that the office workers must be treated separately in effect strengthens the hands of management to keep them separate?

MR. FINKELMAN: That may be.

MR. MACDONALD: I mean, Mr. Macaulay has just pursued the questioning which I started out with and it seems to me that a case has not been made that there is any more genuine difference than the necessity of separate bargaining by office workers than there is between different locals and an amalgamated local. You can get into some of the big amalgamated locals, for instance, where there are a dozen different units within the amalgamated local.



MR. FINKELMAN: Yes, but, Mr. Macdonald, take Local 195 of the UAW at Windsor. I do not know how many units they have, perhaps 100 or more. Now, in that situation there would be a bargaining committee representing the employees of the particular plant. They would be the ones to determine what terms and conditions are applicable. The whole local does not bargain in every instance where Local 195 agreement comes up. Now, they would know the conditions in their particular plant, they would know what demands should be made. The employer would deal primarily with them. Now, the fact that there may be one hundred different plants under 195, and the fact that the one hundred different plants should be manufacturing one hundred different products or may have one hundred different terms and conditions is not a serious problem at all because the bargaining committee will determine what the demands are to be for that particular plant.

MR. MACDONALD: By the same token the demands will be made for the office workers instead of having them separated off?

MR. FINKELMAN: If your bargaining committee in a particular situation has to deal both for the plant and the office I would say that there is less likelihood of a ready agreement because there would be a divergence of interest between office workers and the plant workers. Those





divergences would be -- if you will permit to go on I can give you an illustration of the sort of problem that arises, not in an office unit but at General Motors. I cannot vouch for the accuracy of my information because I have picked this up in the course of my dealings with various parties. The skilled trades in 1950 felt they were not given adequate attention in the negotiation of the agreement at General Motors and there is a good deal of difficulty over a period of years there. The skilled trades are a part of the General Motors operation and UAW is now carrying on a plan to give the skilled trades greater representation and what they call freedom of bargaining on their own behalf; I am not too sure what that means but that in itself is an indication that there is a desire on the part of the employees to have themselves represented in a slightly different fashion from the way in which they are represented at the present time because there is a need there. Just to be specific, our experience has been that office workers have that need and are normally better represented when they are apart from the plant employees.

MR. MACDONALD: I am not denying there is going to be, to a degree, a point of interest, but the point is, why does the Board lay down the decision in the instance of the office workers they must be separate whereas in the instance of the others it is left to the workers themselves



whether or not they would be a separate local, the skilled workers. For instance, they may decide they want to go to a craft. We have this problem, but it is a decision that is left to the workers; in the instance of office workers it is the decision of the Board; am I correct?

MR. FINKELMAN: Mr. Macdonald, they do not now have to be in a separate local. The Grey case said they do not have to be in a separate local. That was our change of policy about two years ago. They do get a separate certificate. Normally they can be in the same local but they bargain on their own behalf apart from the plant employees. I can only point to the experience of fourteen years to support that point of view. In this jurisdiction, so far as I know, there has not been any great dissatisfaction with that policy. I have appeared at conferences of labour and I have appeared at conferences of employers and I have yet to hear anyone criticize the policy we have now. I think that supports the view.

MR. REAUME: I think that is a fact. In the instance of the Ford people, they have a union in the plant -- of course they have one in the office now -- and on every occasion you can imagine them being part of the automobile workers at any time anything arose whether with respect to plant or the office workers. They are all one and the same people, so



they work together as a team. I have found in Windsor no argument at all on that score. When they are working on an agreement both office workers and the plant join as a team. Now, where I find some fault, if there is some fault to find, is in the arrangement with Chrysler. For instance, they have about eight thousand people in that plant and within the framework of the plant they have about 38 people in the power house and these power house people are part of the AF of L, so that those 38 people at any time -- at any given time -- of course could throw that plant out on a strike. I am not prepared now to say whether that is bad or good, but those agreements as between 8000 and 38 people should be negotiated; when they negotiate one agreement the other also should be.

MR. MACAULAY: Do they?

MR. REAUME: No, they do not.

MR. MACAULAY: That partially bears out one of the points I was making. I am not talking about anybody's fault, they are just trying to establish a set of facts. You said they joined as a team. They should all be in the same bargaining unit.

THE CHAIRMAN: Mr. Finkelman has said there was not any demand by office workers.

MR. MACAULAY: That is not any excuse.

THE CHAIRMAN: It is if you listen. We





have listened very patiently to you. Has there been any demand by office workers or plant workers as such that they should bargain together as one unit?

MR. FINKELMAN: I am not aware of any demand along those lines. I have read the various briefs and attended conferences.

THE CHAIRMAN: I think that is the answer, These people have not asked for it. Why should we concern ourselves about it?

MR. YAREMKO: As I see it, the experience of the Board has been that this is a good way to do it. Now we have heard the expression from the chairman of the Board and at a later date we might here from others showing perhaps that their experience is not that way, but we have to accept the opinion of the chairman of the Board that the policy of the Board has been through the years -- their policy, the policy of other boards, and experiences have backed up that policy. Whether that is good for the industrial relations to keep them separate as separate bargaining units the Committee has to wait and ---

MR. REAUME: Are we not on the wrong track?

THE CHAIRMAN: I think so.

MR. REAUME: As I understand it now, if the officer workers now want to be part of the unit



they can, can they not?

THE CHAIRMAN: With a separate certificate.

MR. REAUME: Yes.

MR. FINKELMAN: They can be members of the same unit but they get a separate certificate and bargain separately in practice unless there may be a union so they can bargain together.

MR. MACDONALD: That is what I want to clarify. I think it was said that they must be in a different local and now we are told they can be in the same local and have a separate certificate.

THE CHAIRMAN: I do not think it is our personal opinions that should indicate what should be done for the Labour Relations Act; it is what is in the best interests of labour and management, and when there is no request from office workers or plant workers why should we try to befuddle the issue?

MR. MACDONALD: I think you will agree with this, that if there has been a Board decision or it has been understood that there is a Board decision that office workers are going to be separate in separate locals then that question is not being raised every second day back at the local and they say, "We cannot do that," and go ahead and organize as a separate local, but if they are asked you may discover they have ---

THE CHAIRMAN: They can belong to the same local but they have a separate certificate to



bargain.

MR. SPOONER: I do not want to pursue the point but perhaps Professor Finkelman may have some idea of what is done in other jurisdictions on that question?

MR. FINKELMAN: Much the same as we are doing here.

MR. SPOONER: I might say in my experience that I have had occasion over a period of years to deal with unions and the municipal employees in the municipality in which I was interested at two locals, but they were associated with the municipal employees union in Toronto and they dealt separately and had separate agreements with different terms, varying in different conditions. That was found to be very satisfactory by the employees concerned. I never heard them complain about it and it was found much better for management to deal with them because they were dealing on the one hand with the Public Works occupations and on the other hand the office employees. The thinking of those people is not the same and what would be of interest to office employees was of no interest to the Public Works employees and vice versa. I think it would just confuse it if they are all in the same pot.

THE CHAIRMAN: Is there anything further under the topic?

MR. MACDONALD: On page 4 all these



categories which are excluded from the Act or from coming under the Act, some of them, the reasons for their exclusions are rather obvious, but there are others that puzzle me. For instance:

"Any person employed in agriculture, horticulture ---"

Now, I understand, for instance, that there are hundreds, in fact, perhaps thousands of people who are working in greenhouses and because they fall within this category they cannot be brought legally into a union so they are in and then out, and you have a situation in which you are going to have so-called illegal strikes because they are not entitled to the general rights under the Labour Relations Act. That is with respect to horticulture.

MR. FINKELMAN: These particular employees in horticulture, agriculture, hunting or trapping are excluded from the Act; such a limitation or exclusion has been in the legislation from the very beginning. Perhaps it does not lie in my mouth to make this comment but I think it is a "political" decision. There are difficulties in dealing with people engaged in agriculture. There are a number of considerations there which I cannot go into because I do not know what lies behind this exclusion entirely. In the first instance I would like to point out that people who are engaged in horticulture, not being covered in the Act, do not engage in an illegal or





unlawful strike. They are not covered by the Act and the Act does not apply to them at all. None of the provisions of the Act apply to them, so if they go on strike they are covered by the common law. We have nothing whatever to do with them, They do not violate the Act by going out on strike because they have never complied with the terms.

MR. MACDONALD: But they are denied the rights of the Act?

MR. FINKELMAN: It is true they are denied rights under the Act.

MR. MACDONALD: You made a comment that this is a "political" decision. I suppose this is the kind of thing you get in policy that we may get into throughout this Committee, but in your experience should horticultural workers who are roughly in a commercial enterprise be unionized and taken out of this exclusion?

MR. FINKELMAN: I am afraid I cannot answer that question.

MR. MACDONALD: Well, who can answer it then?

MR. FINKELMAN: No, I don't know.

MR. JACKSON: Horticulturists.

MR. MACDONALD: No, I think it is either those who are administering the Act or those who are responsible for forming the policy. It is either Mr. Finkelman or the Minister. Horticultural workers



were excluded when this Act was formed and we have had changing conditions. Surely that is no reason why it should be permanent.

HON. MR. DALEY: Is it not difficult to separate horticultural workers from agricultural workers? Some workers may work for a bit in greenhouses part of the day and then they are out in the field doing agricultural work part of the day, and then they could go in to do some, what might be termed, horticultural work, but how are you going to separate them? In the minds of the people when this was developed and these exclusions were put into effect it was considered impossible to separate them and that it was actually agricultural work.

MR. MACDONALD: The net result is that because they may work part time in the field they are denied the rights under the Labour Relations Act, but for the greater part of the time they are working in the greenhouses. We have to really examine this. In fact, it is the whole purpose of the Committee. I know it is rather an embarrassing spot to put Mr. Finkelman on but what I would like is a very frank statement from Mr. Finkelman as to which, if any of these categories - and I am presently satisfied that horticulture is one -- should not now be excluded in the light of the passage of time.

HON. MR. DALEY: I would say that is a subject for this Committee to consider. When the



Act was developed, in the first place, it was deemed advisable by the Government to exclude agriculture, horticulture, hunting or trapping, "members of the architectural, dental, engineering, legal and medical professions entitled to practise in Ontario" and so on. Now, if that should be changed, well, that is something for this Committee to consider, but we deemed it almost impossible at that time to separate horticulture and agriculture because they worked for the same people and do various things. Who can say that a man/<sup>who</sup>works in a greenhouse is a horticulturist and when he is sent out to do some work, if they grow a lot of things, from a horticultural point of view, how are you going to separate it? It is really considered to be agriculture.

MR. MACDONALD: Let me take it this way for the moment: the purpose of the Labour Relations Act is to give a group of workers who want to join unions of their choice the collective bargaining power they would not have as individuals. The reason why agricultural workers are excluded is by reason of the fact that they are scattered usually over great areas. Now, surely if the spirit of the Labour Relations Act is going to leave out this group of people who may be working part time in the field but are working a good proportion of their time as a unit in a greenhouse, they may be within all these conditions that make it difficult





for agricultural workers to be brought into unions. But if you have a great group who are in a position to deal with an employer, where a good deal of their work is done in a greenhouse, why could we not change this Act to give them the benefits of the rights of the Labour Relations Act instead of making exclusions and saying they are agricultural workers?

MR. METZLER: I would like to say there is a history for this in the working labour relations, this exclusion, which is in a sense the forerunner of our present Labour Relations Act: "Persons employed in domestic service, horticulture, agriculture, hunting or trapping", so there is a historical basis.

MR. MACDONALD: Not what has been for twelve years.

MR. METZLER: But there is a historical exclusion.

MR. MACAULAY: I was thinking of the Dale Estate in Brampton where they have a great many employees, presumably mostly working in greenhouses. Just as an example, would you care to express an opinion whether you think there is any justification today for the exclusion of, say, for instance, greenhouse workers?

MR. FINKELMAN: I do not think I can express any opinion on a matter of that sort.

HON. MR. DALEY: I think that was the difficulty. They possibly work some days an hour



in the greenhouses and the rest of the day outside in what may be termed agricultural work out in the fields because a good many flowers and that sort of thing are grown outside as well as in the greenhouses.

MR. MACAULAY: Well, could you not look up the man's actual terms of employment to determine whether he was entitled to the effects of the Act rather than just saying because one is working with dirt and soil that they therefore should not have the opportunity of taking advantage of the Act?

MR. MACDONALD: In other words, are they not a potential bargaining unit as much as the people who work in the factory?

MR. WREN: Do you think agricultural workers should be organized?

MR. MACDONALD: I am not arguing my case on agricultural workers but I point out that in countries like Britain they have organized and have a good strong union. In Canada you have relatively few agricultural workers, but in horticulture let us not confuse the right of the agricultural workers with the horticultural workers. In greenhouse workers you have surely a bargaining unit that surely has many of the characteristics of a bargaining unit and I cannot see any reason why they should be excluded from the Act. For the historical basis of it, they were excluded back during the war, and that strengthens it. The war has been over for twelve



years, let us get up to date.

MR. MACAULAY: There may still be good reason for excluding them but all I want to know is the basis for it and whether circumstances have changed today sufficiently to warrant consideration by the Committee to exclude them. That is all. I do not take the position my friend does, I do not know whether they should be included or excluded but I am curious about it.

THE CHAIRMAN: I think possibly the answer to that would be if we could hear from some of the horticulturists themselves and hear how they feel about it, whether they would be willing to work a five-day week for eight hours a day or whether they want to work as horticulturists as farmers have always done from dawn to dark. That is one very important aspect of the matter; I think they and only they would be willing to tell us.

MR. MACDONALD: That is not necessarily relevant. There was a day when a newspaper man could be called out any time at all, but they have smartened up there and now they have a union.

THE CHAIRMAN: That is so, but the earth and the earth's products are different from newspapers.

MR. YAREMKO: Is there not really a practical problem that would be confronting the administration in order to segregate the clearcut



horticulturist from the agriculturist? Is there a clearcut line or is the line so indefinite it would be impossible in a practical way?

HON. MR. DALEY: That is what we considered was the difficulty years ago when this exclusion was put in. You could not separate them. A man may be a farmer to all intents and purposes but he does have a greenhouse and he does grow some specialized thing in the greenhouse which I suppose would come under horticulture and yet he may only be in the greenhouse an hour in the morning to water the plants or something and be farming all day. Now, how are you going to separate them?

MR. MACAULAY: Well, people in the nursery business and so forth, it seems to me that they are in the business of making money. They grow the things to sell as an industrial enterprise. I would think there were some cases where it would be very difficult to say whether a man was a horticulturist or an agriculturist, and I would think there would be some cases where it would be pretty clear.

MR. YAREMKO: I am confused. If anyone asked me to define a horticulturist right now I would not know and I do not know if there is a man around the table who could. If you grow strawberries under a glass you are a horticulturist. If you grow strawberries in the field are you an agriculturist?





MR. MACDONALD: With all respect, I do not think that is the relevant point. The point is, if we can hear now a group whose characteristics as a bargaining unit entitle them to be given the rights of the Labour Relations Act instead of being excluded from it--and I suggest there are fully enough characteristics of a bargaining unit that you could line up excuses that they are agricultural workers if you want to --, you can line up that they are a bargaining unit and should have a right to it. It is a matter of approach. Do you want to give them or deny them the rights?

MR. WREN: I feel the occupations in agriculture and horticulture are so similar that if horticulturists were brought into the Labour Relations Act -- I am not suggesting they could not be -- but we are setting out if they are brought into the Act their occupations being so similar would have a direct effect on the agricultural industry itself. I would rather hear some evidence from horticultural and agricultural people.

THE CHAIRMAN: That is my point. We should have something from them and no doubt we will have. It is clear that it is the opinion of some members of the Committee that the horticulturists should be considered as a group to have the benefits of the Labour Relations Act, and if they make representations to this Committee we will come to



a decision that will be satisfactory to them and to all concerned.

MR. WREN: There is one point I would like to make. I would like to ask Professor Finkelman, is any portion of the Civil Service than those set out here, such as the police department and so on -- are any sections of the Civil Service prohibited from getting the benefits of the Labour Relations Act? Let us say, for instance, the Department of Highways who essentially are in the construction work or engineers -- would they be excluded from the Labour Relations Act?

MR. FINKELMAN: Under the Interpretation Act the Labour Relations Act does not apply to the Crown and the Department of Highways is part of the Crown.

MR. WREN: So that any employee of the Crown as such would not enjoy the benefits of the Labour Relations Act; is that correct?

MR. FINKELMAN: No, it does not apply to them.

THE CHAIRMAN: Is there anything else under this topic?

MR. MACAULAY: Is there anybody on the list that is going to be called from any of these agricultural matters to which we refer?

MR. MACDONALD: I think there is. You may not recognize it but I think District 50 of



the Union of United Mineworkers attempted to do some organizing in the greenhouses and I notice they are down there.

THE CHAIRMAN: I notice that the packing house workers have applied, the meat cutters have applied for certification on behalf of the horticulturists and no doubt we will hear from them. What meat has to do with horticulture I do not know. Shall we move on, gentlemen, to page 4, membership requirements?

MR. WREN: There is one other point, Mr. Chairman, on this. Some case was made earlier about this voluntary agreement, and one point I am not clear on. After management and labour enter into a voluntary agreement and the bargaining unit of the employees is essentially a company union, what effect does that have before the Labour Relations Board certification?

MR. FINKELMAN: May I just ask what you mean by company union? It may have different meanings.

MR. WREN: Let me frame the question this way: these voluntary agreements are entered into. Does the Board look upon the union as being one of the recognized trade union organizations or would they accept any group of employees who state they are a union?

MR. FINKELMAN: A union on its first appearance before the Board has to establish its





status, and one of the things it would have to establish as set out in Section 9 is that:

"The Board shall not certify any trade union if any employer or any employer's organization has participated in its formation or administration or has contributed financial or other support to it."

If the trade union is one that has been organized by the employer, if the employer has participated in its formation or administration or if he has contributed financially or offered any other support, then under Section 34 that agreement would not be a collective agreement.

MR. WREN: Just pursuing that, I want to get this clear in my mind. What would happen then if a union applied for certification for employees who were covered by an agreement with a union which is not certified; what happens then?

MR. FINKELMAN: It would depend on the period at which the application is made. Let us say, taking your example, as I gather you have it in mind, the company-dominated organization which has made an agreement with an employer as of the 1st of January, 1956 or 1957, let us say. Now, we are now in June and let us assume that an international union has applied for certification of the employer and the company union, and I am using the term "company union" in the sense of being dominated, the company



union intervenes and says, "We are covered by an agreement and this application is untimely because it has not run the required ten months". Now, if the application by the international union is made during the first year of the life of the agreement the onus of establishing that the agreement is a valid and binding agreement rests on the company union; after the first year the onus rests on the union which is seeking to upset that agreement.

MR. WREN: Well, by way of illustration, I ran into a case not very long ago where there was considerable activity towards organizing in a mining area one particular group in this area. One particular employer group persuaded the men that it may be in their best interests if they did not align themselves with the recognized trade union, and as a consequence the company entered into an agreement with the men directly and that agreement to all intents and purposes is in effect now. They have negotiated one with the other to set up certain working conditions and rates of pay and so on. Now, where the employer has participated so directly in the organization of that agreement, the setting up of that agreement, I would take it from your remarks that if the application were made to the Board for approval of that agreement it would not be granted; is that right?

MR. FINKELMAN: We would not approve it because we have nothing to do with the approval of the



agreement. That is not one of our functions. What does happen is, another union may apply during the first ten months of the life of that agreement and the company union says, "We have an agreement and you are barred, you cannot come in at this time." The employer says the same when the matter comes before us on the application for certification. If it is in the first year we would call up the company union to prove it is a legitimate organization.

MR. WREN: In other words, you recognize company unions as such if they proceed properly in the setting up of their organization?

MR. FINKELMAN: If there is no employer domination and the organization satisfies the requirements of the Act -- it is an organization of employees formed for the purposes of the Labour Relations Act, then it is a valid organization and will be recognized as such.

MR. MACDONALD: I wonder in the light of the experience of the Board if Professor Finkelman would comment on the advisability of deleting Section 78 from the Act?

MR. FINKELMAN: I am afraid my answer is No, I would not be prepared to make any comments on that.

MR. MACDONALD: Well, Mr. Chairman, I have a comment too: it seems to me we are going to get into endless difficulties in trying to make up



our minds here whether or not certain changes should be made in the Act if we cannot get the benefit of the experience of the Board.

THE CHAIRMAN: Well, the decision as to the changes in the Act is to be made by this Committee. I do not think the officials of this Department should be asked now, "Do you think this should be done or not?" That is not their job, that is our job.

MR. FINKELMAN: Mr. Chairman, I wonder if I could crave your indulgence to have a few moments with the Board off the record. I would like to have a frank discussion with members of the Committee for a few moments.

THE CHAIRMAN: Does the Committee concur this should be off the record and not reported?

MR. REAUME: I move that, Mr. Chairman.

THE CHAIRMAN: Seconded by Mr. Macdonald?

MR. MACDONALD: No, I am not seconding it. It is not a good principle.

MR. YAREMKO: It is either unanimous or not done at all.

THE CHAIRMAN: Oh, yes.

MR. WREN: Just on a point of order here, I took the sessions -- correct me if I misunderstand -- I took these present sessions to be more or less educational as far as the Committee is concerned. I have some opinions about the Act and its application and the work of the Labour Relations Board, and what





I am concerned with now, before having delegations who are going to express opinions one way or the other, I am interested in learning about the functions of the Board and what is going on. I do not think we should start now to decide policy because that is going to take some months. I want to know how the Board functions or operates and if Professor Finkelman can enlighten us either off or on the record I would like to hear it.

THE CHAIRMAN: I think it would be most unfair to the professor for him to state what the policy should be.

MR. REAUME: He has not anything to do with the policy.

HON. MR. DALEY: Would Mr. Macdonald repeat his question of the professor?

MR. MACDONALD: My question was, in the light of the experience of the Board in trying to solve the problem of municipal workers, would it not be better to have Section 78 deleted?

HON. MR. DALEY: I do not think that is a fair question to ask the professor because it gets right back to government policy.

MR. MACDONALD: Let me elaborate: what we are trying to get in the educational process is the experience of the Board so that we can advise on the changing of government policy. Now, if we are denied getting the experience of the Board or if



we are going to get the experience of the Board it should be on the record. Otherwise we cannot make recommendations as to the changing of policy. In other words, our whole function as a Committee is seriously restricted.

THE CHAIRMAN: Well, to bring it to a head I will rule the question is out of order and should not be answered.

MR. MACDONALD: I just want to make this comment in this connection: Under the Labour Relations Act you give the people of the Province of Ontario certain rights and under Section 78 you give the right to take those rights away by the vote of the municipal council. I think this is going to cause, has caused and is going to cause strikes which are described as illegal strikes. If I may go back to Professor Finkelman for a moment, I remember hearing him at a meeting in Hamilton about two years ago in which he made a statement which has a growing validity, namely that the strike for the right to organize a union is part of the 19th century; it is a growing validity but as long as we have Section 78 in the Act it has no validity.

THE CHAIRMAN: The strike cannot be illegal.

HON. MR. DALEY: Could I say, Mr. Chairman, that a strike carried on by a group of municipal employees that wisely or unwisely the elected council



of that municipality has taken out from under the Act -- mind you, every municipal employee is under the Act until taken out by the municipal government.

Now, if that municipal government -- and I say again wisely or unwisely because I have stated publicly I think they are unwise to take them out ---

MR. MACDONALD: Why not change the thing then?

HON. MR. DALEY: But if they do take them out and those people decide to strike it is not an illegal strike, they are not under the Act, they can strike, there is no bar on them at all. If they are under the Act then there is control, there is the Labour Relations Board, the conciliation services and all this available to them, but if the council takes them out they are not striking illegally, they can strike any time.

MR. MACDONALD: My point is simply this, and I think it is very germane, we have certain what we might call civil rights in Canada. They are laid down in the Act and nobody can vary them, Nobody can take those rights away from a certain individual. I submit you have, roughly speaking, an analogy here. You have a group of people who have certain stated rights under the Labour Relations Act. They are free to organize in the union of their choice and bargain collectively with their employers, but then Section 78 says some other group of people have the right





to deny them this, in other words to wipe out this basic right in the Act. As long as that exists, I submit the Act is violating its own spirit.

THE CHAIRMAN: There has always been the objection of violating the authority of another government; that is a very important point.

MR. MACDONALD: Do we object, do we hesitate, for instance, in stopping a local council which is going to deny a man basic human rights?

MR. YAREMKO: If we reach the stage that we are writing a report ---

MR. MACDONALD: What I have been ---

MR. MACAULAY: What you have been doing is making a speech.

MR. MACDONALD: I want to get at the educational process.

MR. YAREMKO: On the second day of the proceedings of this Committee you have already made up a conclusion that Section 78 should be deleted. This is neither the time nor perhaps the place to start writing a report of the Committee.

MR. MACDONALD: I have sought some information from the Board as to their experience which conceivably might prove to me that I am wrong.

THE CHAIRMAN: I have ruled that the topic is out of order. Now, Professor Finkelman I think in fairness wants to make a statement which I think we should hear.



MR. FINKELMAN: What I was going to say off the record, and I think I should now say it for the record, is this: As Chairman of the Board I am prepared to answer any questions on the policies of the Board and the reasons for those policies. Those policies are not matters of government policy. They are made by the Board and the Board will accept responsibility for them and I will accept responsibility for them. They are not the Minister's responsibility. On the other hand, in the Department it has been my fortune or misfortune to be associated for many years with the drafting of this legislation, and as a civil servant my feeling was that I should not be called upon as an individual to express an opinion on government policy. I think that is a matter which lies entirely within the province of the Minister and I cannot express any opinion thereon. If Mr. Macdonald wishes to ask any questions with relation to the number of cases that have come before the Board and in which municipalities have been involved and files have been passed, and the number of cases for which files have been opened, I will be glad to get him that information, but, I cannot, I feel I should not, express opinions which are political opinions of the Department and to which I may be privy as a member of the Civil Service.

MR. MACAULAY: That is very fair.

MR. MACDONALD: I think that is very fair.



THE CHAIRMAN: Shall we move on to membership requirements?

MR. WREN: Mr. Chairman, one question about membership requirements I would like answered, in the light of experience. When the Act requires that a union seeking certain rights must obtain from employees in a plant their written indication to associate themselves with a union and deposit or submit with that application the sum of \$1: now, is there anything in the experience of the Board where people have paid this \$1 to obtain the required number of names to support an application and have been unable to, by one means or another, withdraw after the certification has been granted? Has that ever occurred and if it has what corrective steps are available?

MR. FINKELMAN: The Board is interested in membership at the time of the hearing. If a union has applied for certification and has filed the requisite evidence of membership and any employee seeks to withdraw from the union, he is entitled to do so and to notify the Board before the hearing is held **or** at the time of the hearing. Once the hearing is held the decision is made on the basis of the evidence before the Board at that time. After the hearing if he withdraws from the union that will have no effect on the result because we would be in a constant turmoil. We would have to be reviewing every certification every day that somebody writes in



to say he does not want the union, but provision is made under the decertification proceedings for employees who may not want the union, to apply that termination of bargaining rights at the proper time.

MR. WREN: Again by way of illustration, this one incident I was talking about in the mining area, where a man submits his dollar and he is persuaded by someone else to withdraw from his association with the union, it jeopardizes both the union and the agreement itself. I have in mind one other aspect of it: is the man made aware when that dollar is received what his final obligation is going to be, financially, in his association with the union? I have in mind one particular case I know of in the United States, which I don't think necessarily applies here, but it might, and that is, where a man had applied for membership in the union and certified his intention to belong to it once the union was certified, and on the union being certified he was faced with a membership initiation fee of \$350 to maintain his association with the union. Does that situation develop here?

MR. FINKELMAN: I know of no case where that has been brought to the attention of the Board.

THE CHAIRMAN: Aren't we getting into the internal workings of the union itself? Has that anything to do with the Department?

MR. WREN: No, I have no intention of





doing that. The Act sets out that the man must offer the sum of \$1 to show his good faith.

MR. FINKELMAN: We chose \$1 because it was in evidence of good faith.

MR. WREN: Yes, but it could happen both in trade and in company unions that he might find himself financially embarrassed as to his further obligations. The point is, why wouldn't it be possible, or would it be a bad thing, to suggest that if union dues for the year of, say, \$25 a year, that he submit his \$25 with his application, and if the union is not satisfied, the \$25 would be returned to him, but all the while he would recognize his final obligations?

MR. FINKELMAN: If you were to insist on the sort of principle that you are suggesting, you would be loading the dice against the unions whose initiation and membership fees may be high. The Board on several occasions has given very careful consideration to these matters: I believe the last time was in December 1952 when they spent about two days reviewing this whole situation, and they came to the conclusion that it was desirable to have some sort of uniform standard to which all should conform, and we haven't had any cases brought to our attention where there have been exorbitant fees.

MR. WREN: But I have known of cases



where the dice have been loaded in favour of the employer, because the man has tendered a dollar and the employer hears about this intended application for certification and goes to the man and says, "Do you realize what your obligation is going to be? The best thing for you to do is forfeit your dollar and get out because your costs will be exorbitant."

Unfortunately, in one case I know of there was no union official immediately available to deny or confirm that statement, and the man became apprehensive about it and withdrew his application and his one dollar bill. I wondered why the dollar was established? It is just a token offering, in other words?

MR. FINKELMAN: Well, it was, in the days when the principle was first established, the usual one month's dues.

MR. MYERS: Why should not a workman be called upon to show he has complied with the requirements of the union for membership?

MR. WREN: Yes, that is right.

MR. MYERS: Why should we establish an arbitrary standard of membership in a union which is not a membership requirement at all?

MR. FINKELMAN: Because if you did otherwise than what the Board has done -- and it is pretty well a uniform pattern across the Dominion -- some unions would pass resolutions saying the 25-cent fee was adequate, say, for the first year or the



second year -- for any period of time -- and you would have the policy destroyed altogether. You can manipulate union constitutions very easily. If it was felt one uniform standard -- and, incidentally, the standard is not necessarily the payment of one dollar: on page 5 there is a variety of tests that may be satisfied: the payment of a dollar, the taking of the obligation, and other acts consistent with membership, and so on. We found that was a standard that would apply right across the board and satisfy everybody reasonably.

MR. MYERS: Really, though, the union can be certified if it gets enough workmen who merely express an intention to belong to the union and are not prepared to follow that up with other union requirements.

MR. FINKELMAN: They simply indicate they want this union to represent them as the bargaining ---

MR. MACDONALD: Does Mr. Myers want six months' dues in advance?

MR. FINKELMAN: If you require the full initiation fee, which in some cases may be high, you would eliminate the possibility of the workers joining the union, because maybe they would not have that amount of money. They indicate to us they want this union by paying a dollar and signing the card, and then, they can make whatever terms they want to with the union -- how they are going to pay their





balance; I don't know what they do, but if there is a \$25 fee you would be loading the dice against the union.

MR. MYERS: We would be having the employees knowing exactly what they were called upon to comply with.

MR. WREN: We are just using the \$25 figure as a hypothetical amount, and I am not so much concerned with that as I am with them knowing that by paying their dollar that at some time in the future they have to put up another \$24. They should know their obligation when they indicate their intention of joining.

MR. FINKELMAN: Well, that is internal with the union.

THE CHAIRMAN: That is up to the union themselves.

MR. FINKELMAN: The union may pass a resolution that they don't have to pay this year.

MR. YAREMKO: Are the results of the vote made public information? Do you tell the union whether they got the 55, 56, 57 or 54 per cent?

MR. JACKSON: Could you enlarge on that? I have the same type of question: on the vote, how, when, where and why do they vote? Could you enlarge on that and tell us how the vote is done, and what jurisdiction the Act has with the vote, if any?

MR. FINKELMAN: There are two separate



situations: I believe Mr. Yaremko's question was whether the union is informed of the percentage of members that it has among the employees. The way that is handled is as follows: At the hearing in each case -- and incidentally I should mention that every case before the Board in Ontario is heard in what might be called open court; we have a public board room and the public is admitted to every hearing. A notice is sent by registered mail to every party involved in the application well in advance of the hearing so they can attend. They are notified the case will be heard at a certain time and place, and copies of the weekly agenda are sent to all the newspapers so that anyone can attend and see how the Board operates. The Board sits at the present time about four days a week, starting at 9.15 and continuing until the day's business is concluded, and that may run anywhere from an hour to five, ten hours, depending on the volume of business and the complexity of the cases.

When a case is called, the representatives of the parties come up to the counsel table, and the Board will discuss with them formally the composition of the bargaining unit, and once the representations with regard to the bargaining unit have been made we give the parties what we call the count; that is to say, we inform them of the number of names on the list filed by the employer, and we



give a breakdown of that list to disclose any peculiarities in the list. For example, if the list contains names of foremen and office workers, or the names of any craft people whom the parties may seek to exclude, or anything of that sort. Then we advise the parties of the number of cards that have been filed by the union, the amount of payment shown on the card, and, another consideration which is not a rigid requirement, but something which we like to see, is a counter signature on the receipt. That is, the receipt for payment should bear not only the name of the person who collected the money, but also the name of the person who paid the money, so we can, if any question arises about the validity of the payment, have all parties before us to testify.

Let us assume there are one hundred persons on the employer's list, and that the union has filed 65 cards and 65 receipts: we will announce that information to the parties, and if there is any great loss of cards -- let us say only 40 of the cards stood up, that is to say, only 40 match the names on the employer's list -- we will indicate to the parties that only forty did stand up. In other words, that there was a substantial discrepancy between the number filed and the number that stood up. If the union feels there is something<sup>wrong</sup> with the employer's list -- for instance, if it has made a check before coming to the hearing and they say, "Our estimate of the



number of employees in the plant is not 100 but only 75" -- and they can do that by counting the number of cards on the time card rack, or they may have gone out and counted the number of employees in the plant -- if the union challenges the accuracy of the employer's list, an examiner will be appointed to check on that, and, in due course, a report is presented to the Board and made available to the parties in the proper case. So that the union does know where it stands and the employer knows where he stands in the matter of membership. The final count is made after the Board has adjourned and has set the bargaining unit, and I should indicate that the number of valid cards that the union has are usually not disclosed even to the members until after the bargaining unit has been set, so that in their thinking -- the bargaining unit -- their thinking is not conditioned by the fact the union may lose or gain, and the employer's thinking is not conditioned by the fact that the union may lose or gain. We do give a rough count in the beginning, and if there is a wide discrepancy between the number that stood up and the number filed, that information will be disclosed, and the members of the Board will have that information, because there is no other way of handling the situation.

On the question of handling representation votes, it is as follows: when the Board directs that a representation vote be held, it fixes the





eligibility date; it says, "Employees as of this date" -- the date when the decision is made, so it is impossible for the parties to jerrymander. The instructions are sent out to the parties to meet and make arrangements for the vote. They meet among themselves without any officer of the Board being present, usually. If it is a difficult case, and the parties cannot agree, one of the Board's examiners will be delegated to attend on the parties at the situs, and try to make arrangements.

MR. JACKSON: It is employer and trade union?

MR. FINKELMAN: Yes. The representatives of the parties will meet and make all the arrangements for the vote; that is to say, the hours when the vote is to take place, and that will depend on the working hours in the plant, and shift hours, and how easily persons may be released from a certain operation, the date when the vote is to take place, and, they usually agree on two or three days to enable the staff to pick a proper date that will suit the convenience of the Board as well, and they will agree on the list; that is, the employer will prepare a list in, say, triplicate or quadruplicate, and the parties will sit down and check that list. If there is any challenge of any person on that list, that name is underlined in red and the list is then forwarded to the registrar of the Board



with a statement by each of the parties as to the reasons for the challenge. If the reasons for the challenge are matters of a very simple nature, the registrar will rule on the eligibility of those voters. If there is any complication at all the registrar will direct that the votes of the persons who are challenged be segregated, and I will explain how that is handled in a few moments; and that the vote then go on. So that, at the time when the vote is taken the registrar has in his possession -- or, before the time of the vote being taken, the registrar has in his possession verified lists containing the names of all employees eligible to vote. On the day the vote is taken one of the other members of the Board, an examiner, will go down to the plant: votes are always conducted right in the plant, and he will take a vote in the same way as a vote in any political election will be taken. He is the returning officer. The parties will appoint scrutineers who sit in for the purpose of identifying the voters. As each voter appears, his name will be ticked off the list after he is identified, and a ballot will be handed to him. He will mark that ballot and deposit it in a sealed box, as in other elections, and when all the votes are in, and the hours for voting have been completed, the ballot box will be opened in the presence of an agent of the parties, appointed for the purpose, and the ballots counted.



As far as segregated ballots are concerned, if a person whose name has been challenged appears to vote he will be handed a ballot and he will be handed two envelopes: one is a white, opaque envelope with a line down below, and appearing on it are the words "Secret Ballot". He is asked to mark his ballot and seal it in that envelope, and that envelope, which has no identifying mark, is then sealed in a brown Manilla envelope, and on that envelope the registrar will write whatever information he can obtain from that person as to that person's eligibility. A question may arise as to whether he started work after the date when the vote was directed -- the date on which the list is frozen. A question may arise as to whether he is a foreman or an office worker, and included in the bargaining unit, or what not. That information will be on this Manilla envelope. These Manilla envelopes are then sealed and taken by the returning officer and transferred to the registrar for his safe keeping. In most cases we have found there is no necessity for examining the segregated ballot because the result of the voting will be clear one way or the other. Either the union has won or lost, and the segregated ballots make no difference at all. If the segregated ballots do make a difference, they will be returned to the Board, the returning officer prepares a report of the vote, and a report of the reasons for these





ballots being segregated -- incidentally, a report on every vote is mailed to the parties for their information; instead of merely having the amount of the voting, there will be a statement that, say, five ballots were segregated because these people were challenged for the following reasons, and the reasons are given, and the information set out in the report. That report is sent to the parties, and they have seven days within which to object to the report or offer to provide any additional evidence with regard to the matters set out in the report. In the vast majority of cases, no exception is taken to the vote, no exception is taken to the report, the parties have no further evidence to offer. Once the seven days have passed -- and the parties are notified they have the seven-day period -- if they do not object, the Board will read the report and decide whether these ballots should or should not be counted. If the parties take exception to the report they are entitled to appear before the Board and make representation as to eligibility or non-eligibility of any person. If the Board rules any of the persons whose ballots were segregated should be counted, the Board itself will open the ballots and will count them and report. If there are a great many segregated ballots, so that it looks as if the way in which a person has voted is likely to be disclosed, we will direct that the ballot box be sealed and not



counted at all until after the Board has ruled on the eligibility of voters. That does not happen often, but it happens from time to time. The Board will then rule on the eligibility of voters, and then, itself, count the vote and report to the parties. So, the secrecy of the ballot is observed to the utmost extent. There are the odd cases where the number is small, and one ballot may affect the whole issue, where you can't protect the secrecy of the ballot completely. Those are so rare that they really don't enter into consideration at all.

Mr. Metzler has pointed out another thing I should mention: the ballots are printed by the Board.

MR. JACKSON: They are usually "For" or "Against"?

MR. FINKELMAN: It is set out in the Act: you will find a copy of the form on page 50. There are two different types of ballot: what we call the "Yes, No" ballot, when there is only one union involved, or the "Two-way" ballot when there is a choice between two unions. That is a sample ballot, but the actual ballot is printed by the Board, and we change the colour from time to time, and nobody except the Queen's Printer knows what the colour is going to be, so there is no possibility of stuffing the ballot box.

MR. JACKSON: Are the votes ever made



public?

MR. FINKELMAN: The result of the voting?

MR. JACKSON: Yes.

MR. FINKELMAN: Yes, every time a vote is held.

MR. YAREMKO: The percentage -- not just "Carried" or "Lost"?

MR. FINKELMAN: No, no; the complete result of the vote is contained in the report: the number of persons eligible to vote, the number of each party, and the numbers segregated, and spoiled ballots.

MR. YAREMKO: Would it be possible for us to get the statistics of the representation votes that have been held by the Board?

MR. FINKELMAN: Yes.

MR. YAREMKO: In the course of our hearings there may be various statistics we will be asking for, and I think that statistic, on the result of the representation vote, might be one of them.

MR. METZLER: You would want the statistics for a given period. Professor Finkelman and the Board operate on a fiscal year basis. What you are really asking for is, say, the operation of the Board in that respect during the fiscal year?

MR. YAREMKO: Would it be too difficult to do it for the last ten years?

MR. FINKELMAN: We have accurate statistics for about three years.



MR. YAREMKO: Say, for the three years:

"Number of representation votes held -- carried, say, 55 to 65 or to 75 -- or 35 to 45"?

MR. FINKELMAN: We could prepare that.  
the Committee

MR. YAREMKO: That would give/a picture  
of what the representation votes have been during that  
three-year period.

MR. MACAULAY: Mr. Chairman, in connection with that would there be any value in knowing whether these representation votes -- which side they had been requested by?

MR. FINKELMAN: It would mean looking through the notes in every solitary case for a period of years.

MR. MACAULAY: Well, I will tell you why -- and perhaps that was not the right question -- but, under this you have the right to order a vote or not order a vote, as you determine: now, I have always been of the theory that except where votes should not be had, because of some specific reason -- and this happens to be a view of my own and not necessarily by any means right -- that a vote should be held. It seems to me to be a democratic process. I know in many cases -- or, in some cases, votes are not held, and I was wondering if my point of view would be in any way vouchsafed for by any of the facts surrounding any of the votes.

MR. FINKELMAN: I think I know what you





are driving at, and I can assure you the information you would get would not give you sufficient to build one hypothesis or another.

MR. MACAULAY: No. Would it be possible to find out how many certifications took place as a result of the Board ordering a vote, and how many certifications are lost -- I suppose that is implied. Would it be possible to find out how many certifications are the result of an order of the Board, apart from a vote?

MR. FINKELMAN: Yes.

MR. MACAULAY: Out of the total one could then see how often you certify without a vote.

MR. FINKELMAN: I can tell you the vast majority of certifications are dealt with without a vote.

MR. MACAULAY: May I ask you, is that because on the average the evidence is so clear? When do you usually, from the policy, require a vote?

MR. FINKELMAN: We require a vote when there are two unions involved; when either two unions apply in the initial stage for certification or when there is an attempt by one union to displace the incumbent union; there is always a vote in those cases. We require a vote where the statute stipulates there has to be a vote, namely between 45 and 55 per cent. We require a vote where there is evidence of opposition which counters evidence of membership to such an



extent that the position of the union is not clearly above 55 per cent without opposition.

MR. WREN: Professor Finkelman, quantitative standards: it is pointed out that employees who are absent from work during voting hours and do not cast their ballots are not included in the number of eligible voters. What is the thinking behind that regulation?

MR. FINKELMAN: The principle that has been established in this jurisdiction is that a union must obtain a majority of the votes of those eligible.

MR. WREN: Then, a man off duty is still entitled to come in?

MR. FINKELMAN: Oh, yes. The section says, " . . . absent from work during voting hours and does not cast his ballot . . .": if you start with the premise that you have to have a majority of eligibles, then anyone who does not vote, in a sense, votes against the union. The argument was submitted to the Minister that was unfair because a person absent from work is, in effect, counted as voting against the union. In either 1954 or 1956 the Act was changed to make the count work in such a way that a person who is absent from work and does not come in is not counted on the eligibility list. If he does come in he is entitled to vote and his vote is counted.

MR. WREN: Were there many, from your



experience, who deliberately stayed away from voting?

MR. FINKELMAN: It is not a question of people staying away, but of people being ill or people on vacation.

MR. WREN: If a man has gone off shift at eight o'clock, and the voting commences at eighty or nine o'clock, what happens then?

MR. FINKELMAN: Well, I can assure you on that score that the hours of voting are always arranged so that they overlap the shifts. There is not normally a continuous voting period, except in a plant where there is a one-shift operation. If there are three shifts the vote will be held to overlap the shift, and if there is an operation where a person is off for a day -- that is, where his day off work is not Sunday but, say, happens to be on Wednesday -- the vote will be carried over a two-day period to ensure everyone eligible to vote will have an opportunity of voting.

MR. MACAULAY: Is there no provision for somebody to cast a ballot who is going to have to be absent? Under this present situation his vote does not count against the union, as a result of the amendment, but he may wish it to count for the union, and he may be absent for reasons over which he has no control.

MR. FINKELMAN: We can't set up machinery for taking votes of persons under those circumstances.





The votes are taken by an officer of the Board who goes from Toronto to the situs.

MR. MACAULAY: But you have the authority in the Act so to do?

MR. FINKELMAN: I think we would have authority. There is nothing in the Act which would prevent it, but with the number of votes we have to take it is impossible to handle a case like that. There may be one person off, and you send a man up to Sioux Lookout to pick up ten votes, and one person happens to be off, and it would mean you would have to send up two people.

MR. MACAULAY: Am I right in saying that it is not much of a problem either?

MR. FINKELMAN: No, because the parties themselves will make sure the vote is held at the time most convenient for everyone. The union is interested in choosing a day when everyone is there, and so is the employer.

MR. MACAULAY: What did you say about men who have a day off?

MR. FINKELMAN: If he has a day off, the parties will usually arrange that the voting hours be spread over such a period of time that he will be able to vote.

MR. MACDONALD: What is the normal percentage of eligible voters who vote?

MR. FINKELMAN: It runs about 88 per cent.



MR. SPOONER: You speak of these lists of eligible voters: how much time elapses between the establishment of that list and the vote being held?

MR. FINKELMAN: It would depend on the circumstances -- the degree to which the parties will cooperate, and so on and so forth. It depends on the size of the operation. For example, in 1943 when we took the vote of International Nickel, I was registrar of the Labour Court at the time, and this was under the auspices of the Labour Court, and I spent three days in Sudbury going through all the operations of International Nickel to get an idea of what was going on. About two weeks later I came again and listened to argument for three or four days on the eligibility of certain persons in the bargaining unit. The Court was not as precise in its definition of bargaining units as the Board is. The vote was held on the 17th of December, and I think in that case it took about two and a half months from the time the vote was ordered until the day the vote was taken. That is very rare, though; usually a couple of weeks go by.

MR. METZLER: There would be about 14,000 employees involved.

MR. FINKELMAN: There were about 9,000 ballots cast in that particular operation.

MR. SPOONER: Take the case of a small operation with 100 employees: there should not be



that great lapse of time?

MR. FINKELMAN: Oh, no, not if the parties cooperate. We do run into trouble once in a while where the parties do not cooperate: the employer is not preparing the lists, or the union official is not around at the time to scrutinize the list, in which event we have to egg them on to get the vote on. We keep after them to make sure there is no great lapse of time.

MR. SPOONER: Mr. Chairman, I would like to have your permission to ask further questions on this point later on. There is certain data I would have to obtain.

THE CHAIRMAN: Yes.

MR. MACAULAY: Mr. Chairman, would the vote procedure be different if the legislation were to provide that a simple majority of those voting would result in certification? If there were such provision in the legislation, would you feel it would be proper to require a vote in all cases, or would you go on certifying -- could you go on certifying if the -- I am just wondering: do you think you would require a vote in all cases if that were to be a condition of quantitative standards?

THE CHAIRMAN: Once again, I think we are dealing with policy and I do not think the professor should be asked to set that down.

MR. MACAULAY: I am not asking what his



policy is. I am saying, sir -- subject, of course, to your ruling -- but I am putting a hypothetical situation to him which strikes me as being a set of facts, and I am wondering whether it would be more workable or less workable if a vote were to be ordered. You, Mr. Chairman, may consider that to be policy, and, if so, I will withdraw the question.

MR. YAREMKO: Well, the procedure would be exactly the same, wouldn't it? If the Board was satisfied that there was more than 55 per cent, you could still order or not order a vote, and whatever the vote would be, it is the results of the vote that would come to the different conclusion.

THE CHAIRMAN: As I understand Mr. Macaulay's question, he is putting forth the proposition that a simple majority should be the governing influence.

MR. MACAULAY: No, no.

MR. YAREMKO: Oh, no, he was asking a question: the vote procedure would be exactly the same except the Board would use a different norm to decide whether the application was successful or not successful.

MR. REAUME: The procedure would not be the same, would it?

MR. FINKELMAN: I don't see how you are going to conduct votes under any different way under one system or the other. The vote would be conducted in exactly the same way.





MR. MACAULAY: I was wondering whether the vote would be mandatory in the event the legislation provided that 50 per cent of those voting would carry the day.

MR. FINKELMAN: I can only refer you to a famous statement of a famous judge many hundreds of years ago: "The thought of man is not triable, for the devil himself knoweth not the thought of man", and I am incapable of forecasting what my colleagues on the Board may do.

THE CHAIRMAN: Is there anything else on this topic, gentlemen? If not, we will move on to the negotiation of collective agreement, page 6.

MR. WREN: One question there, Mr. Chairman: it is clearly set out that the trade union is required to give the employer written notice of its desire to bargain. There is no like requirement on the part of the employer to indicate his desirability to bargain. Is that well taken care of by the union so indicating?

MR. FINKELMAN: Generally. The requirement to give notice being imposed on the union alone applies only in the case of bargaining which follows immediately after certification, and the reason for that is that the union has asked for certification and the obligation, surely, is on the union which has been successful to pursue its rights, and if it does not do that, then under the decertification



provisions of the legislation it may lose those rights. On the other hand, where an agreement has been entered into, and you are dealing with the renegotiation of the agreement, the obligation to give notice is imposed on the employer as well as on the trade union. That is covered by Section 38. There is equal responsibility.

MR. MACAULAY: I am sorry I missed this on page 5, but could the professor tell us, on quantitative standards, subsection 4, special cases where you order a vote where there may have been interference by a company?

MR. FINKELMAN: Yes, but that is Section 7(5) of the Act.

MR. MACAULAY: Could you tell me what percentage of the certifications which are given without a vote are given because the Board is of the opinion that this situation exists?

MR. FINKELMAN: Very rarely.

MR. MACAULAY: Is this a common kind of occurrence?

MR. FINKELMAN: No, it is not.

MR. SPOONER: On page 6, Mr. Chairman, these words are used, in the Act:

"They are required to bargain in good faith"; could we have a statement from the professor as to exactly what is meant by that?

MR. FINKELMAN: I think that is one of



the most difficult things to define in the whole Act, and I don't know whether I would care to undertake a definition at this time. It is much easier to deal with a practical set of circumstances than to give a theoretical discussion on what is implied. It would mean that the parties sit down and honestly bargain.

MR. SPOONER: That is my understanding of it, but recently a friend of mine gave me an instance in which he was involved where negotiations were taking place and the union asked for certain increases in pay, and so on and so forth. It concerned a municipality. The municipality came back and said, "We are very sorry, but the best we can offer is this, and this is our reasoning behind it: we think we have fairly good working conditions, and so on, and we cannot meet the wage demands". The municipality was accused by the union of not bargaining in good faith. Well, isn't that bargaining?

MR. FINKELMAN: I would not care to give you a ruling on that, Mr. Spooner. I would have to hear the whole story to see whether there was or was not bargaining in good faith in the circumstances of the particular case. There have been few instances where there has been an application to the Board for leave to prosecute for failure to bargain in good faith, not because people are so law-abiding that they always do bargain in good faith, but simply because it is one of those intangible things that it





is very hard to determine, and, as I pointed out, in most cases in Ontario, instead of seeking leave to prosecute, they hope that the members of the conciliation staff can induce the parties to bargain in good faith, and I would presume to say, without having any personal knowledge of the situation, that that is what the conciliation officers do in a great many cases.

MR. MACAULAY: How many instances of these prosecutions are you familiar with?

MR. FINKELMAN: You mean applications to the Board for leave, or cases in which leave has been granted?

MR. MACAULAY: Requests for leave.

MR. FINKELMAN: I would have to look at the annual reports.

MR. MACAULAY: Is that a common occurrence?

MR. FINKELMAN: No, it does come up, and the figures that you get in the annual report are misleading to some extent. I am not suggesting they are deliberately misleading, but they can be misunderstood unless you know what is behind them. Suppose there is an application with regard to an unlawful strike: there may be 100 employees involved, and the employer may apply for leave to prosecute every one of the 100 employees, and our statistics show 100 applications. The strike is settled and all those applications are dropped.



What you have, really, is one incident, but there may be, as far as figures are concerned, 100 applications.

MR. MACAULAY: So when you have failure to negotiate in good faith, the request to prosecute is not brought against the bargaining unit, but rather against all the members of the union?

MR. FINKELMAN: Oh, no; when there is an application for leave to prosecute because of failure to bargain in good faith, the application would be made against the union because the union is the entity which does the bargaining, and the application would be against the union.

MR. MACAULAY: Well, in the case you gave, why would there be 100 employees?

MR. FINKELMAN: I was merely referring to our statistics. If you are asking about the number of cases in which there was an application for leave to prosecute for failure to bargain in good faith, I would say they are very rare.

MR. MACAULAY: And of the number of applications, what proportion are weeded out by you for which consent is not given?

MR. FINKELMAN: It is hard to be accurate statistically in a matter of this sort. If you have very few cases, and the odd one goes through to prosecution, you haven't got accurate statistics.

MR. MACAULAY: Could we get that?

MR. FINKELMAN: Certainly.



MR. MACAULAY: And then, the number that actually went into court?

MR. FINKELMAN: The number of cases under any head which proceeded into court could probably be counted on the fingers of both hands since 1943.

MR. WREN: I recall an incident a couple of years ago where an individual owned a furniture factory in Grey County, and the union were attempting to bargain collectively, shall we say, and the gentleman who owned the factory said, in effect, "Well, I own this place and I am having no part of it, and I will shut it down", and he did shut it down. What is the policy of the Board in cases like that?

MR. FINKELMAN: If he shuts the plant down completely?

MR. WREN: He just said, "I am not having any part of this; I am going to shut down", and he did.

MR. SPOONER: There was no agreement in effect.

MR. WREN: Well, I am not too conversant with all the details.

MR. FINKELMAN: There is a provision of the Act which says -- Section 52 -- "Nothing in this Act shall be deemed to prohibit any suspension or discontinuance for cause of an employer's operations or the quitting of employment for cause if the suspension, discontinuance or quitting does not constitute a lockout or strike."



MR. WREN: There is an interesting point there: let us take a hypothetical case, where a group of employees have gone through all the normal processes of the Labour Relations Act and have been certified and have been given the right to enter into a collective bargaining agreement, and the owner says, "I am not going to have any part of the union in my plant at all, and as far as I am concerned I am going to cease operations", and he closes the plant down.

THE CHAIRMAN: I suppose if a man wants to go out of business, you can't keep him in business.

MR. WREN: It is a lockout, isn't it?

THE CHAIRMAN: Not if he closes up entirely. I can close my law office tomorrow, and nobody can say anything about it.

MR. MACDONALD: Isn't it conceivable that that Section, in effect, provides a legal loophole for management not to bargain in good faith?

THE CHAIRMAN: What man, if he is making money, is going to close his plant?

MR. MACDONALD: There has been the odd one stubborn enough.

MR. MACAULAY: Well, surely, he is entitled to stop working if he wants to. If he closed down for a few months and then opened up again, that would be different.

MR. MACDONALD: Well, for what duration of time do you consider it legitimate for him to





stop operations?

MR. FINKELMAN: We haven't had a case like that, but some years ago, during the war when there was a prohibition against striking, the men who operated the trolley in Oshawa, employees of the C.N.R., decided they did not want to work any longer for the C.N.R. because they were not getting the wages they thought they were entitled to, and they quit in a body and went to work for General Motors and other plants in Oshawa, and nothing could be done about it. The Federal Government, which had authority, didn't do anything about it. Now, this is rumour, so I can't vouch for the accuracy of it, but the Federal Government took the position that they had severed their employment and they could not do anything about it.

MR. MACDONALD: Is there any time period in which you judge this is a legitimate business -- to cease completely?

MR. FINKELMAN: I can't answer your question, because it hasn't happened.

MR. WREN: In this case it did happen. This person threatened to close his plant and did close it, and in subsequent months -- I am not sure how long after -- reopened the plant after he had more or less got his way. In other words, he had starved the men into submission, in practical English. Don't you think that was bargaining in bad faith?

MR. METZLER: It wasn't bargaining at all.



MR. FINKELMAN: If the facts are as you stated, that may be so, but since the unit didn't see fit to bring the case before the Board, we have no official knowledge of what went on.

HON. MR. DALEY: We had a case not so long ago where a group of craftsmen were in negotiation, and they were not getting along as fast as they thought they should, and we were informed they didn't go on strike, that they had just decided they were going to take a holiday, and they didn't come to work. They were not on strike.

MR. YAREMKO: Didn't you spell out this New Method Laundry and Dry Cleaners case? You say: "Indeed, the calling of a strike or the instituting of a lockout is not an alternative or a substitute for bargaining, it is in its very essence part and parcel of the bargaining process and has been so recognized since the latter part of the 19th century. If we were to hold otherwise we would be saying in effect that, once a strike has been called or a lockout instituted, good faith and reason are no longer to have any place in the relationship between the parties." Do you recall that?

MR. FINKELMAN: Yes, but I don't think it is applicable to this situation.

MR. WREN: I think where a person deliberately refuses to negotiate with people who are certified under law, that there should be machinery



set up where the public trustee or somebody could take his plant over for him.

THE CHAIRMAN: Mackenzie King threatened to do that once in Renfrew, but he didn't do it.

MR. MACAULAY: You would not say that was true if he permanently closed down?

MR. WREN: But he didn't.

MR. MACAULAY: No, but if he had?

MR. WREN: He made no bones about it: he said, "I am going to smash these people", and he did smash them, and then he reopened his plant.

THE CHAIRMAN: That case never came before the Board.

MR. MACDONALD: Maybe the relevant question, then, is, in instances like that, if the union is smashed, you haven't got an entity to bring it before the Board: are there many of these cases that do not officially come before you?

MR. FINKELMAN: It is hard to tell. I don't think there are many of them. I would say in this particular case, since I gather I wasn't a member of the Board at that time but was in academic isolation -- and I think I can express an academic view on the matter -- I would say that if a man said, "I am going to smash the union and I am closing up my plant", if the union had applied to prosecute, it would probably have been given leave under those circumstances.





THE CHAIRMAN: Is there anything else under this particular topic?

MR. MORNINGSTAR: Mr. Chairman, there is a similar case down our way where they were negotiating and the management just closed the plant. This plant hadn't been in operation very long.

THE CHAIRMAN: Did it break the union?

MR. MORNINGSTAR: They haven't yet. That would not be bargaining in good faith.

MR. FINKELMAN: We had a case, the John Bertram Company in Dundas where the owner at that time decided that he was going to fire the entire bargaining committee, and as soon as they came to see him he fired every one of them. They came to me and we had him in and talked it over with him, and he said, "I am an old man and I haven't had any holidays in a long time, and I think I will go to California for six months or so", and we tried to convince him that would not solve the problem, and that he could not possibly get away with firing his bargaining committee, so he said he would, but I said, "Well, in a month or six months you will be back, and no union would agree to having a man elected to a bargaining unit discharged simply because he was elected to that office." He came back and he hired them all back, and he started his plant again. He thought that was the way he could get rid of this organization, but it just didn't work that way, and it can't be done.



MR. REAUME: Take an instance where a plant moves from one place to another -- and there are many instances of that. Whether they are moved away because of the union, or for other reasons, I don't know. However, I know of one instance where a plant moved from Windsor to Stratford, and they were all members in Windsor of the Automobile Workers group. Now, it is the very same plant in the very same province, moving to Stratford and becoming part and parcel of an AF of L group. It appears to me that things of that sort are only going to breed trouble, and where a plant moves from one area to the other within the boundary lines of the province, if they were a certified union in Windsor, wherever they move they ought to be a union, or they ought to be organized within the framework of the very same union.

MR. JACKSON: Why?

THE CHAIRMAN: It is up to the employees.

MR. METZLER: The employees may not follow the plant. They may decide not to go to Stratford.

MR. REAUME: Well, taking that attitude, we are only going to encourage what are known as back-door agreements.

MR. JACKSON: Why are they?

MR. REAUME: The people who were employed in the plant in Windsor didn't have an opportunity



of going to Stratford, so a plant picks up holus-bolus and moves into Stratford, and I don't think it is beyond the realm of our thinking to imagine that the manager went down ahead of time and made arrangements so he could break the shackles of the Automobile Workers Union.

THE CHAIRMAN: Gentlemen, it is now one o'clock and we will adjourn until two o'clock.

---The Committee adjourned at 1.00 p.m. until  
2.00 p.m.

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--On resuming at 2 P.M.

THE CHAIRMAN: At the time of adjournment we were dealing with negotiation of collective agreements.

MR. WREN: Pursuing a question I asked this morning where the union is required to commence negotiations within a reasonable time, what is the process if that union entirely neglects to carry out that process? Would that bar any union from securing certification over a closed season period?

MR. FINKELMAN: No, there is provision in section 43 which you will find referred to on pages 16 and 17 of your memorandum:

Upon the board making a declaration that the incumbent trade union no longer represents the employees in the bargaining unit ---

then moving over to page 17 under C :

- (1) If the trade union after certification has failed to give notice of desire to bargain within 60 days following certification, or
- (2) If neither party has given notice of its desire to renegotiate the collective agreement within the two month period prior to the date the agreement ceases to operate, or
- (3) If the requisite notice has been given but the trade union fails to commence bargaining within 60 days from the giving of the notice,





or

- (4) If bargaining has commenced but, before conciliation services are granted, a period of 60 days has elapsed without any attempt to bargain being made by the incumbent trade union.

So, if the union sleeps on its rights, an application can be made either by the employees or the employer to get rid of it.

MR. WREN: The employees could negotiate to set up another union?

MR. FINKELMAN: Once they get rid of one union, another union may apply.

THE CHAIRMAN: Is there anything else under this heading?

MR. REAUME: I just have one question. I do not know if it is a little early or not but I want to ask if in the instance of a company moving its operations from one place to the other in the province, if it is possible for them to transfer? Is it possible for the board or the department; have they the power to transfer an agreement, the working agreement existing between the company and the union from one spot to the other?

MR. FINKELMAN: Broadly speaking, the parties by agreement can change the agreement to cover the new location. If the parties do not do it voluntarily, however, the board is of the opinion that under the legislation as it stands it cannot transfer the



bargaining rights from one location to another.

MR. MACAULAY: Can or cannot?

MR. FINKELMAN: Cannot.

MR. REAUME: I was thinking in the interests of harmony, in the interests of avoiding any strikes or something of that sort, would it not be wise if we were to give some thought to the possible amendment to the Act allowing or giving somebody the power to transfer the union from one place to another in the event the company or part of the company moved from one spot to the other? In the instance of the Ford Company moving part of the operation from Windsor to Oakville, when they moved, of course, the automobile workers who had an agreement with them for years had to start organizing over again and it might have been in that instance, assuming that another union had to step in there to organize that plant, we might have got into the field of an argument. I think in the interests of keeping the thing cool and in harmony, we have to give some thought to this business of transferring an agreement from one spot to the other, for instance, where a part of a plant moves.

HON. MR. DALEY: In that particular instance, the automobile people, Ford, and the union or any other union knew very well that the U.A.W. were going to follow Ford's to Oakville and be right in there. As a matter of fact, they were set there before the plant got there.



MR. REAUME: That is quite right but we have an instance here where the same type of industry moved out of Windsor and the union were not up and at it as much as they ought to have been and one of the groups of the A.F. of L. groups stepped in and organized whether after dark or before dark or a back-door agreement or anything else, but the fact is they did organize it and that is the very same plant that moved out of Windsor into Stratford and the automobile workers were really mad about it. I am not saying as to who is right or wrong. I am only saying it is in the interests of harmony that we ought to avoid, if we can, any trouble that may arise from a thing of this sort and if we can give some thought either now or at any time to the possible passage of an amendment to the Act giving the Minister or the department the power to transfer the agreement from Windsor to Stratford, Windsor to Toronto, Oakville to Windsor, I hope it will come probably whenever that thing arises, if they have that power it may avoid in the future some arguments and troubles or perhaps some strikes.

THE CHAIRMAN: I think that is a matter we should certainly consider in making a report.

MR. JACKSON: It is pretty well as broad as it is long because as long as you have workers voting on the union, have you not eradicated your problem or difficulty? You have the voters themselves in





a locality following the usual rules of the Labour Relations Act. Where is your problem?

MR. REAUME: Here is your problem. I am just reading a story here now, the case that came before the board. It is perfectly evident from what I read here and from what I know in Windsor that this plant moved out of Windsor, one of the reasons being they did not like the union with which they were involved there, so they moved lock, stock and barrel out of Windsor and left about 400 people sitting on their backs and moved into Stratford and worked out an agreement in a hurry with another union. Now, I think there should be some law stating that they should have carried on the agreement inasmuch as it was the same company, merely a change of name, it was the same company making the same kind of thing and the very same kind of operation. Would you not think it proper that they should have called in the head of the union in Windsor and said, "We are going to pick up our plant and go"?

MR. MACAULAY: They would not do that if they were sneaking away without anyone knowing.

MR. MYERS: It is a different set of problems, they would be a different corporation, a new company would be formed.

MR. REAUME: It has the same officers.

MR. JACKSON: Why is it wrong; who has lost?

MR. REAUME: I think one of the things that



is our purpose here, if we can, is to pass such a law or laws that may bring about a better feeling between employer and employee in the province. That is what we are here for.

MR. MYERS: No doubt about it.

MR. REAUME: And I think this is one of the very things that causes that feeling.

MR. MYERS: It is very difficult to do.

MR. YAREMKO: Is not the whole basis of the Act based on the idea that a certain union is designated to bargain on behalf of certain individuals, ... a certain group of individuals, a certain unit? That, to my way of thinking, is the basic idea. It is not the union is endowed with the right to bargain with that employer but it is endowed with the right to bargain with that employer on behalf of a certain unit which existed on a certain date.

MR. MACAULAY: Certain ---

MR. REAUME: I agree with that, but ---

THE CHAIRMAN: Are we not anticipating a little? Is this not something to consider when we are making a report?

MR. MORNINGSTAR: Mr. Chairman, just to question Mr. Reaume a little, this union in Windsor might endeavour to organize the boys in Stratford?

MR. MACAULAY: They did not know about it.

MR. REAUME: They were a little slow on the draw, I think, but with the help of management



another union came in and organized. Now, in effect what happened was that they got rid of the 400 people and placed them on the unemployed list and got themselves an agreement at Stratford with lower hourly wages.

MR. MACAULAY: But these 400 people would have been unemployed even if they had transferred the union to the new town if the persons could not go?

MR. REAUME: But they did not have the opportunity of going.

THE CHAIRMAN: Where would they get the housing? There are so many things there you have to consider in moving from one town to another.

MR. MACAULAY: Is not the Chairman's point well taken, that this is something we can put over now and discuss when it comes to a report?

THE CHAIRMAN: Is there anything else under this topic?

MR. MACAULAY: Mr. Chairman, may I ask Professor Finkelman if this is a proper place to ask him any questions about decertification or does that come later on?

MR. FINKELMAN: There is a heading "Termination of Bargaining Rights" on page 16.

MR. MACAULAY: Very well, I will wait.

THE CHAIRMAN: The next topic is conciliation on page 7.

MR. MACAULAY: Mr. Chairman, one of the



complaints which I think has generally been raised in relation to conciliation procedure is that it takes too long. Before the meeting commenced, I was asking Professor Finkelman to give me some estimate of the minimum amount of time involved in conciliation procedure. I assume from his own statement this morning and the ruling of the chair, that it would not be proper to ask him what amendments he would suggest, if any, if it was considered that the process was too long.

THE CHAIRMAN: I would not think it would be fair to ask Professor Finkelman that question.

MR. MACAULAY: All right. I think for the rest of my colleagues on the Committee that it would be very interesting to them if you could give an indication of the total length of time, the minimum, that can be taken in one of these conciliation procedures.

MR. FINKELMAN: That is a difficult question to answer because not all cases are the same. All I can do is set out certain time limits that are mentioned in the Act and you will have to draw your own conclusions from them. There is one provision in section 13, subsection 1, that 35 days have to elapse from the giving of notice, written notice, of desire to bargain before the board can grant conciliation. Now, that time may be shortened if both parties make a joint application to the board or if





no progress in bargaining is being made. For instance, if the employer says, "Despite the fact you have asked for a meeting, I refuse to meet". Under such circumstances, there could be an application to the board that we have to proceed with the matter without waiting 35 days. Now, when the matter gets into the hands of the board, the board notifies the parties that an application has been made and I think the time of a routine case there would be about seven days, it might be shorter than that because if the employer replies before the seven days are up and has no objection, the matter will be referred immediately.

MR. MACAULAY: Excuse me, do you mean seven days after the 35 days and before the conciliation officer comes on the scene, 35 plus 7?

MR. FINKELMAN: Yes, there must be an application to the board to grant conciliation from the day we receive it and presumably the application would be made ~~within~~ the 35 days, it takes about seven days before we send it up to the Minister. That is the time required in mailing and receiving a reply. Now, there may be one or two more days involved depending on the day of the week in which the application is made. On a five day week, if it comes in on Friday, it is impossible to process that sort of application until the Monday. Then, the Minister is required to appoint a conciliation officer forthwith, that covers the time taken in processing the



application, appointing the officer. Under the Act, the conciliation officer is required to report the result of his endeavours to the Minister within 14 days from his employment.

MR. MACAULAY: 35 days there and how many days is it usually before the Minister succeeds in getting the conciliation officer onto the scene?

MR. FINKELMAN: I am afraid I cannot tell you that, Mr. Fine would be able to give you that information.

MR. FINE: It varies.

MR. MACAULAY: What would be an average?

MR. FINE: I would say about 35 per cent. of the cases are held within the 14 days specified under the Act; about 58 per cent. within 2 1/2 to 3 weeks.

MR. MACAULAY: Well then, the 14 days that were said to be 21 days would include the time for the Minister to appoint the conciliation officer and the conciliation officer to hold his hearing and to get his report back to the Minister?

MR. FINE: I did not quite catch that?

MR. MACAULAY: Would 21 days then cover the time that it takes the Minister to get the conciliation officer in the field and the conciliation officer to have his report brought back to the Minister?

MR. FINE: Not exactly, because the



conciliation officer sometimes cannot bring his report back to the Minister in that time. He has held his meeting, he has arrived at a memorandum of agreement, and he has to sit back and find out whether that agreement has been ratified by the parties and his report is dated from the date of ratification.

MR. MACAULAY: It says:

"A conciliation board is required to report its findings and recommendations to the Minister within 14 days from the appointment of the Chairman ---"

MR. FINE: That is correct.

MR. MACAULAY: He does not do that necessarily, then?

MR. FINE: Not solely, because the intent of that section of the Act is to bring the parties to an agreement and if I am there on the 14th day and I think perhaps it will take me 15 or 16 days, then I will carry on.

MR. MACAULAY: Well, Mr. Fine, can you offer any help to this Committee as to how long that usually takes?

MR. FINE: Well, I tried to. I said in 35 per cent. of the cases we met within 14 days, in 58 per cent. we met within 3 weeks.

MR. MACAULAY: What about the report ---

MR. FINE: I want to go on to say in 78 per cent. of the cases the agreement was arrived at-- 70 per cent. of the cases where agreement was arrived





at, it was done on the first day the parties met.

MR. MACAULAY: What about how long it takes after you have met to get your report back to the Minister?

MR. FINE: I cannot give you a definite date because we have to wait for the ratification of the memorandum.

MR. MACAULAY: You have no average to give us?

MR. FINE: It is my intention sometime in the fall to furnish this Committee with a full report of the time lapse, etc., in the last year.

MR. MACAULAY: Thank you.

THE CHAIRMAN: Anything further on conciliation?

MR. MACAULAY: Yes, the Professor is counting up the days, he has 14 days under the section.

MR. FINKELMAN: Then, if a conciliation board is to be appointed, there is a period of five days that the Minister must wait to allow the parties to name their members and to name a chairman, five days to name a member and three additional days in which to recommend a chairman. If they do not appoint or recommend, as the case may be, then the Minister has to appoint and then the conciliation board is required to report its findings on the recommendations within 14 days of the appointment of



of the chairman, but the period may be extended by agreement of the parties within the Act.

MR. MACAULAY: So that is a minimum of 78 days without any kind of delay?

MR. FINKELMAN: I did not count the numbers but I assume that is correct.

MR. MACAULAY: Well, assuming I can count.

MR. FINKELMAN: Yes.

MR. WREN: Do you not believe that the 35 days under the section is too long to begin with?

THE CHAIRMAN: We have already ruled that question should not be asked.

MR. WREN: I am sorry.

MR. MACDONALD: This whole question of conciliation is perhaps the most cause of dissatisfaction at the moment. Mr. Fine was going to give us some more information later but in the Ontario Federation of Labour Report the one paragraph with regard to this length of time generally required reads as follows:

The law, however, has fallen to such low regard, and the Department of Labour has done so little to enforce its own regulations, that the time taken to complete the process of conciliation (unsuccessfully) now averages over 28 weeks. The procedure has so deteriorated that neither the Minister, the conciliation officers, conciliation board chairman, nor the parties take the requirements of the Act seriously."



Would you consider that to be fair?

MR. FINE: I would say this, there are two phases of conciliation we are talking about, the conciliation officer level and the board level and I was giving you information on the conciliation officer level not the board level which I do not handle. Let me illustrate one case for you: About a year and two or three months ago I sat with a company and a union and I spent 21 days with that company and that union, not 14 but 21 spread over a period of about six weeks. The result of that was a complete agreement between the parties for a period of between three to five years. That is one example I can cite among others where we are in the midst of negotiations, and you cannot just break off, you carry on with the hope of bringing about agreement, both parties are content in respect to that. I can name steel and many others where we spent endless months bringing about agreement.

MR. MACDONALD: Is not the problem not in the cases where there has never been consideration of whether you may work beyond 14 days to 21 but for one reason or another, whether valid or not, nothing is happening and it is going on so that you reach an average far beyond the limit set. I have heard this comment time and time again from trade unions. I do not profess to know how completely valid it is, if you could just live up to the Act, much of



the dissatisfaction would disappear. What are the practical difficulties in living up to the Act?

MR. FINE: The practical difficulties are numerous. For instance, we have assigned an officer to meet with the parties on Monday, July 1st and another party on July 2nd, and so on, and suddenly either the union or the company or both advise us that they cannot come on those days and ask for a deferment of the particular meeting. Now, right there is an illustration, July 1st to the end of August which is almost impossible for the conciliation to fix dates for the parties. There is vacation time of the plants, vacation time for the officers of the union or for companies and so forth, so that the entire time element does not just lie on the shoulders of the conciliator. May I illustrate another point? There are a series of negotiations where, say, the U.A.W. is negotiating for steel or some of the others, rubber, in some key plants and we may have assignments covering about 15 to 20 plants that are directly involved in the result of that first principal negotiation. The unions will say to us, "You better hold those up until we get through with the main plant or the main negotiation". There are so many things involved in these deals that cannot be charged to the conciliator.

MR. MACDONALD: May I ask this question? What proportion of these deals are by mutual consent?





The thing I have in the back of my mind, if there is mutual consent to a delay, that is one thing, but my impression is that a great deal of the dissatisfaction has originated in the fact that there is not mutual consent, there is stalling. Now, management will say it is stalling on the part of labour and labour will say it is on the part of management but my question is, what percentage is there of mutual consent?

#3 MR. FINE: I cannot give you the percentage now but I will say this, at the present time both parties are stalling, not just unions or employers, but both.

MR. MACDONALD: I think we have got to the point that we are so far away from the letter of the law that in the give and take of conciliation being part of the process, everybody is indulging in it and rules are going out the window.

MR. FINE: As a conciliator I would say this: You cannot just abide by the rules of the game. The function of the conciliator, I repeat, is to bring about an agreement if it is at all possible and sometimes he finds it necessary, as I have often done, to work through Saturday and Sunday and week-ends and holidays and nights, leave the office at 5 o'clock in the morning and, yes, 8 o'clock in the morning. A typical example of that was in the Ford negotiation in the current year. We had to meet on



19 different occasions in the City of Toronto and the City of Windsor before agreement was arrived at. I throw my mind back a number of years, noticing a representative of the steel workers here, that we started negotiating with the Steel Company of Canada in Hamilton in the first days of May and we did not complete those negotiations until the end of September, but nobody was hurt one iota by it. It was a clear understanding that whatever came out of that negotiation would be retroactive to the date of that agreement. There was nobody hurt at all.

MR. MACDONALD: I find this all a bit frustrating because am I to come to the conclusion that because of the difficulties you have mentioned, it is impossible to speed up the conciliation procedure?

MR. FINE: I would not say that at all, I am pointing out some of the delays and why they take place. I say in 75 per cent. of the cases successfully concluded, they were concluded on the first day of the meeting, -36 per cent. in 14 days and 58 per cent. in three weeks.

MR. JACKSON: You will get us some figures on that?

MR. FINE: Yes.

MR. MACAULAY: Perhaps this is an ideal time to look after that. We are all concerned about speeding up this conciliation matter and I am hoping



we will be able to ask someone how this can be done --  
I am going to ask someone that question.

MR. FINE: I do not mind at all, I am just pointing out the difficulties but if you could cut it down, the 14 to 1 day ---

MR. MACAULAY: Well, Mr. Macdonald says he wants to find out. He is not advocating to be strictly within the limit of the rules but, on the other hand, we must have some kind of guide and we are trying to find wherein the thing should fall.

MR. FINE: You will recall I said at the outset that there are two phases in conciliation and I am dealing with the one phase, the conciliation officer level.

MR. MACAULAY: Well, we will take it up with you again when you furnish the figures.

MR. YAREMKO: This may not be a question you want to answer, but so far as having statutory time limits, making the time of the absolute essence, do you believe in that or do you believe there should be some flexibility?

MR. FINE: Well, Mr. Yaremko, I believe there should be a time limit involved so that we, the conciliation staff, have something to guide ourselves by but you will not be able to avoid some of the delays that take place because of our attempts to bring parties together because they are inherent in the situation and some flexibility





is essential in my opinion.

MR. MACDONALD: Those figures which Mr. Fine gave, . . . are extremely interesting; those are percentages of the cases you settled?

MR. FINE: Those are percentages of the cases that we have held, not settled.

MR. MACDONALD: That you held?

MR. FINE: That we held for 1955-56.

MR. MACDONALD: 70 per cent., I think you said, were dealt with on the first day?

MR. FINE: 70 per cent. of those settled were settled on the first day the parties met.

MR. MACAULAY: What percentage of the settlements that are reached from your office as conciliators, what percentage of those settlements are of the whole issue involved?

MR. FINE: Every one of them.

MR. MACAULAY: I mean, you do not reach settlement in all cases. Say you reach settlements in 10 cases and there were 20 disputes that year. Would you have reached settlements in 50 per cent. of the disputes? How many settlements are you talking about? Could I have those figures?

MR. FINE: I will try and give you that if I can. 1954-55 we settled 57.6 of the cases referred to us.

MR. MACAULAY: 57.6 per cent.?

MR. FINE: Yes, out of a total of 1,099 references.



MR. MACAULAY: So, then 70 per cent. of 57.6 per cent. you settled on the first day?

MR. FINE: That is correct.

MR. MACAULAY: My head is poor for figures, What did you say the rest were? When were the rest obtained -- within three weeks -- there was something else you said?

MR. FINE: What I said was, in about 36 per cent. of the cases that the first meeting took place within 14 days. In 58 per cent. of the cases it took three weeks.

MR. MACAULAY: All of them are cases you settled?

MR. FINE: That is right.

THE CHAIRMAN: Anything else under this topic?

MR. MACAULAY: On the top of page 8:

'...if no progress in bargaining is being made...'

Who is that?

MR. FINE: The conciliator.

MR. MACAULAY: He makes the report, does he?

MR. FINKELMAN: No, that is the function of the Labour Relations Board, that is a step to the granting of the conciliation.

MR. MACAULAY: At the middle of the paragraph, you say:

"...the Board must grant the request for conciliation services, but it may postpone final



disposition of the application from time to time and direct the parties to continue to bargain in the meantime."

How often do you do that?

MR. FINKELMAN: I could not give you any statistics on it. It happens fairly frequently, I would not say in 50 per cent. or 25 per cent. of the cases but, oh, 10 per cent. of the cases we refer them back -- possibly less than that.

MR. MACAULAY: The start of the next paragraph it says:

"Where the Board grants a request for conciliation services, the Minister is required to appoint a conciliation officer ---".

Is there any time limit within which he must do that?

MR. FINKELMAN: The Act says "forthwith".

MR. MACAULAY: But other than that?

MR. FINKELMAN: No time limit apart from that.

MR. MACAULAY: And I think you mentioned that usually takes seven days?

MR. FINKELMAN: From the time of the application to us, I think the minimum time is about 7.9 days. That would include the cases where there are delays and so on and so forth.

MR. SPOONER: Mr. Chairman, I would like to bring to the attention of the Committee a report



dated February, 1957, we received from the Ontario Federation of Labour and the back pages of a "certain statistics regarding conciliation procedures" and things of that kind. I wonder if it would be possible for the department to give us a survey of the actual number of cases? They quote 61 cases but no mention of 1,098 cases?

MR. FINE: 1,099 were referred to.

MR. SPOONER: 1,099, well certainly the statistical information on 1,099 cases would vary much from a survey of 61 cases. Could we have a survey on your 1,100 cases using the same data as in this report for the purpose of comparison?

MR. FINE: We will prepare that for your fall meeting.

THE CHAIRMAN: Anything else under this topic? If not, we will move on to the collective agreement on page 10.

MR. WREN: Mr. Chairman, there is just one question there; as a matter of interest, in these conciliation hearings I notice that one province, British Columbia, allows cross-examination of witnesses. Is this permitted before the Ontario Board?

THE CHAIRMAN: The conciliation board?

MR. WREN: Yes?

MR. FINKELMAN: I am not acquainted with conciliation Board procedure.





MR. METZLER: I do not know how they run their business, the idea for them is to get the parties to come and endeavour to effect a settlement. I would imagine there is a great deal of discussion passing between the parties, the representatives of the parties ---

THE CHAIRMAN: I acted as counsel for the union in Renfrew at the conciliation board hearing where I was permitted to cross-examine as also was the counsel for management.

MR. WREN: The union brief said it was not permitted.

THE CHAIRMAN: I did it, and so did he.

MR. METZLER: Professor Finkelman brings to my attention section 22, subsection 1:

"Subject to this Act, the conciliation board shall determine its own procedure."

Now, the whole idea behind the thing is to get an agreement and how they do it, they may have various ways.

MR. WREN: If cross-examination would help it would be permitted?

MR. METZLER: It depends. I would say at the outset that a conciliation board's hearings, the first thing it has to do is to inform itself on the area and the nature of the dispute between the parties. Now, that may take a certain amount of cross-examination. The parties themselves may have



come there with the idea they are going to present a brief on their position, if they present a brief there may be some discussion and some cross-examination on the brief. On the other hand, they may not present a brief.

MR. WREN: The point I am making is, it is not ruled out necessarily?

MR. METZLER: No, I think you could ask a question and get an answer.

MR. MACAULAY: May I ask, Mr. Chairman, on page 9:

'...he may notify the parties in writing that he does not deem it advisable to appoint a conciliation board'.

That is withholding a board and it may have very serious implications, as Mr. Fine would say. Can you tell me how often out of the 1,099 disputes were referred to you for conciliation, how many boards were recommended of the ones that were not settled and how many boards were refused?

MR. FINE: I can give you the latter part of that first, about 50 cases in which the Minister did not appoint a conciliator.

MR. MACAULAY: What was the nature of the reason?

MR. FINE: There were varying reasons for it. In some cases the job had disappeared or had been completed and there was nothing to be done, that is



in the building trade I am talking about. In others, the parties were making no effort to reach an agreement of the issues between them. There are a great many things which would not warrant the setting up of the board.

MR. MACAULAY: Am I right in assuming the answer to a question that you consider the right to withhold approval or appointment of a conciliation board an important instrument in the hands of the conciliation officer?

MR. FINE: Very much so.

MR. MACAULAY: Why?

MR. FINE: In many cases that assists in bring about an agreement, the very thought in the minds of the company or the union that there may not be a board helps to bring about agreement.

MR. MACAULAY: Do you think it is used often enough?

MR. FINE: I think it is used where it is required.

MR. MACAULAY: The last question I had on page 9:

"Upon receipt of the recommendation, the Minister appoints the chairman."

Is that the same thing as -- does that mean immediately? How long does it usually take?

MR. FINE: I think I said at the outset there were two phases of conciliation, that phase





lies in the hands of the Minister and the Minister's department instead of the board.

MR. MACAULAY: Mr. Metzler, do you know how long it usually takes upon receipt of the application to appoint a conciliation board? How long after is it appointed?

MR. METZLER: I would like to preface that by saying that we run to a pretty tight schedule as between Mr. Fine's office and my own. When the files on a conciliation matter are referred by the Labour Relations Board to the Minister, in the first instance they come to my office and we immediately open a file and I, on behalf of the Minister, sign a memorandum which is a stereotyped form indicating the parties' request to Mr. Fine to assign an officer and the file is sent to him. It does not come back to the of the Minister until such time as the conciliation officer reports. As soon as he gets his report, he comes down to my office again and the file is drawn up immediately. It is a stereotyped form. As a matter of fact, I will, if you like, assemble a docket of these forms so you can have a look at them and you can see the steps that are followed. It would be done immediately because there is no necessity for waiting for instructions. There is a form right there and the two girls in my office know as soon as this report, if it is a recommendation of a board, then all right, we will



go along with it and they will send out I would say within 24 hours. It is then up to the parties to get together or to agree or decide on their nominees and once they notify us we proceed with the appointment and there is no delay in that. As fast as we get them, we appoint them. For instance, one may come in ahead of the other. It may be the union or the company may send in the name of their personnel a day or so in advance and the advance of the other. We do not appoint one. We get them both and appoint them both. In their letter of instructions which is a stereotyped thing, all instructions as a member of the board are outlined. The name of their colleague on the board is indicated and they are requested -- for instance, if we know the telephone number of the other member of the board, we will insert that in the instructions so there will be reasonable dispatch. Then, they may confer on the choice of a chairman and they may agree or they may not agree, and if they do not agree, it comes back to the Minister and it is up to us to appoint the chairman for the board.

MR. MACAULAY: Why could not the application for conciliation service be made available to be made to the department instead of the board?

MR. FINKELMAN: The reason for that is, the board has very important functions in screening these applications. An application for conciliation in effect amounts to a recertification as far as



barring further applications is concerned. If the applications were to be made to the department instead of to the board, it would be impossible to grant that protection because there would be no more scrutiny. In the second place, I think the board deals as quickly with these matters, as expeditiously as the department could because if the application was made to the department, the same process would have to be gone through by the department as it is now by the board, so there would be no saving of time there.

MR. METZLER: There is another element I would like to add: If the application is in respect to a renewal of an agreement, you may find yourself in a position where there is a statement by one or other party that the agreement has automatically renewed itself and there is a dispute between the parties as to whether or not there is an agreement in effect. Now, that would put them in a stir and rather an invidious position to have to determine one way or another. We would have a board consisting of management and labour and an impartial chairman and the question is raised of whether or not the grant of conciliation service is deliberated on and in a disputed case there would be a hearing of the parties.

MR. MACAULAY: Does that happen often?

MR. METZLER: I do not know.

MR. FINKELMAN: From time to time.

MR. MACAULAY: What about the 35 days, why do you need 35 days or why is the 35 days selected or



is that a question of policy?

MR. FINKELMAN: I can answer to this extent, that the policy, I believe as it was fixed in the wartime Labour Relations Regulations was 50 days. That was continued over in the 1950 Act but was reduced about 1954, I believe, to 35 days because it was assumed that within a 35-day period there is a reasonable possibility that the parties will be engaged in bargaining and will have dispensed with many of the contentious issues between them.

MR. MACAULAY: Is it unfair to ask Mr. Fine whether he thinks that is one area in which time could be reduced?

THE CHAIRMAN: The chair has already ruled on that.

MR. MACAULAY: Mr. Fine indicated he wanted to show us ways by which we could save.

THE CHAIRMAN: The chair has already ruled.

MR. YAREMKO: On page 9, it says:

"...the Minister has a discretion to adopt one of two courses: (a) He may appoint a conciliation board or (b) He may notify the parties in writing that he does not deem it advisable to appoint a conciliation board."

What happens then?

MR. METZLER: If the Minister has so notified the parties, they are free to strike. They are out from under the process, or they can come to an agreement, whatever the case may be, but they





are no longer subject to the compulsory features of the conciliation procedure.

THE CHAIRMAN: Anything further, gentlemen? The next topic on page 10 is the collective agreement.

MR. WREN: This collective agreement, Mr. Chairman, I do not know who would answer this but are these agreements continuous? Take the example of a corporation that may have changed hands or a business that may have changed hands. Is the agreement to become part and parcel of the bill of sale, shall we say, and binding upon the new owners?

MR. FINKELMAN: If the legal entity has changed, the agreement comes to an end unless the new legal entity recognizes the agreement there is no provision in Ontario for recognizing successor rights of an employer.

MR. MACDONALD: Is that completely unqualified or has the board the power and does it exercise it of examining whether a change in legal entity was a genuine change or one just to get rid of the union?

MR. FINKELMAN: The board has no power in that respect.

MR. YAREMKO: The board has already made its decision in that regard.

MR. FINKELMAN: I think it is an interpretation of the Act and the policy of the board. I cannot point to any written decision on the point, but I



think it is fair to say that the policy of the board is to say that if no legal entity has come into existence the bargaining rights do not attach to that new legal entity.

MR. MACDONALD: Does this situation obtain in every jurisdiction or are there jurisdictions in which there is a continuity of responsibility towards the union?

MR. FINKELMAN: In some there is and in some there is not.

MR. MACDONALD: Where is there?

MR. FINKELMAN: Some of the western provinces have successor rights for employers. I cannot tell you what they are offhand but they will be shown in the compilation of the various Acts in the Federation that we will be filing with you in the fall.

MR. WREN: I think it is something we might well consider in the report.

5 MR. YAREMKO: The Board rules it is the decision on the interpretation of the Act as it now stands?

MR. FINKELMAN: That is right. Frankly, we do not think if we were to have decided otherwise, the decision would stand in the courts for one minute. That is probably the basic consideration that affected the views of the board, that is the members of the board. At least they went along with that decision.



MR. WREN: It is simply because the Act does not provide for it?

MR. FINKELMAN: On the grounds the Act does not specifically provide it.

MR. MACDONALD: In other jurisdictions where there are successor rights, has it been challenged in the courts and thrown out there?

MR. FINKELMAN: Where the statute provides that the bargaining rights follow the employees, so to speak, irrespective of the legal entity constituting the employer, it could not be challenged in the courts.

MR. MACDONALD: In other words, if we consider this were desirable it requires a change in the Act?

MR. FINKELMAN: I think that is a fair statement of the situation.

MR. MACAULAY: And it would be a complete refutation of a whole principle of law, would it not? It would deny the existence of something that had died or recorded something that was not there. I do not know exactly what, but if you have a company to which is attached an agreement, an employment agreement, and that company sold off all its assets and a new company commenced operations, there may be some problems arise out of any insertion in an Act which says that there were successor rights or whatever you call them.

MR. YAREMKO: Would it be possible to frame the Act in such a way as to give the board the





power to decide whether there was a legal change or whether there was a change in fact?

MR. MYERS: Goodwill, something attached to the goodwill.

MR. YAREMKO: It would be possible to have the board endowed with such powers as to determine whether there has been just a mere change of a corporate name, a change in name alone, not the basic structure of the corporation, that is ownership of the shares, the management and things of that kind as opposed to situation where there was not only a change of name but also a change in management and a change in the corporate structure, a change in the ownership of the shares. The Board could be endowed with such powers. They could look behind the mere -- I might use the word facade -- is that done in other jurisdictions?

MR. FINKELMAN: It has been done in other jurisdictions.

MR. WREN: Is it not a fact though, that these bargaining agreements do not go on forever? They are made for certain parties and the new owner would have an opportunity to renegotiate at the expiration of the present contract?

MR. FINKELMAN: There is a problem I am not prepared to express any opinion as to the desirability of a change or no change being made but just to keep the record straight, I would like to point



out that while an agreement may come to an end, the bargaining rights of the union which is a party to that agreement and the obligation of the employer to bargain with that union is continuous notwithstanding the agreement comes to an end. Those bargaining rights disappear when the employer party to that agreement changes its composition to the extent where a new legal entity comes into existence.

MR. MACAULAY: And a new purchaser, he takes over just that agreement which my friend says only takes up another year but he may own other plants that have another union in, so he may end up negotiating with two or three unions.

MR. MACDONALD: What is wrong with that?

MR. MACAULAY: I do not think there is anything wrong with it.

MR. MACDONALD: May I ask Mr. Finkelman, are there successor rights and/or application for use?

MR. FINKELMAN: Yes, introduced in 1956 to take care of the agreement of the congress.

MR. MACDONALD: If there are successor rights to unions, why not equally for management?

THE CHAIRMAN: There was a merger of the organizations.

MR. MACDONALD: Whenever circumstances made it necessary, the principal is the same. If there are successor rights and obligations for one,



why not for the other?

THE CHAIRMAN: It was done at the request, I would imagine, of the organizations that merged.

MR. MACDONALD: By the same token I am asking why management cannot have it?

THE CHAIRMAN: If they wanted them.

MR. YAREMKO: If the union loses its charter, it loses its bargaining rights, does it not?

MR. FINKELMAN: That is right.

MR. YAREMKO: If it disappears as a so-called legal entity?

MR. FINKELMAN: Well, it is a legal entity for the purpose of the Act. If the legal entity, which is the trade union, disappears, the agreement disappears and the bargaining rights disappear.

HON. MR. DALEY: We have had a good many discussions on this question, and there are so many things that enter into it and I know you will give a lot of study to it. A man owns a plant someplace, he owns two or three, but he is going out of manufacturing one certain commodity that he makes in some small town, he wants to get out of that. He gets an offer to purchase that, but the purchaser would not consider because he may not be able to make the same things. With the sale of that plant goes this agreement. It may interfere with the sale of your



plant that you are anxious to get rid of. Now, is that not taking away some rights from an individual who owns something and who wants to sell it?

MR. MACAULAY: So long as the sale is bona fide, but I really think where it is a facade I think the board should have the right to look into it and decide there has been really no change of ownership and the agreement should continue.

MR. MACDONALD: It is not a normal principle. Mr. Finkelman outlined yesterday that we are faced with this problem of whether or not a certain group of people are genuine, independent contractors or whether they are workers. You examine that relationship and if the relationship continues the same between the two groups, it seems to me there is an equally good case for the board to examine behind it, to get behind the facade and find out whether it is genuine change.

HON. MR. DALEY: I am not arguing that something should not be done on this particular thing because it is quite a problem, but I think it should be looked at very carefully, bearing in mind the rights of people who own something and who want to sell it and are going to have some other thing attached to it that prevents the sale or destroys the sale. On the other hand, where a company is known as the John Brown Company and they change it to John Brown Limited or change it to John Brown and





somebody else and change the whole system, there is perhaps something there to look at, where the structure has not been changed, the product has not been changed. It is just the name that has been changed. Now, that is one question. The other question is, how far should we go in destroying the rights of somebody who has taken a lifetime accumulating something that would force on him something ---

MR. MYERS: It would be a lien against his assets.

HON. MR. DALEY: That is right.

MR. YAREMKO: The question is, if the legislation were changed, would it not be imposing an imponderable task upon the board to ascertain whether it was a real change or just a mere facade.

HON. MR. DALEY: I would have to leave that to the Professor.

MR. WREN: We would be concerned that people who have put a lifetime of service in the plant and helped that person make his money, I do not think they should be idly discarded. Agreements entered into in good faith should not be discarded because someone is making a change.

MR. YAREMKO: It would, as I understand, even a subterfuge if there were one, leans only to a delay unless they want to keep reincorporating themselves on the 64th day, just running out of time and reincorporating. Then it would just be a mere delay,



would it not?

MR. FINKELMAN: There ~~is~~ more than that involved.

MR. MYERS: It would not make any difference. Suppose there was a sale and if the union was certified or satisfactory to the employees, then they would get certified again, would they not?

MR. YAREMKO: Professor Finkelman was giving us an answer. There is more to it than a mere delay.

MR. FINKELMAN: Yes, the union has to go about reorganizing the plant and making application with everything that is involved, whether it is a good thing or a bad thing, the suggestion has been made. It is not for me to say as to whether it would be impossible for the board to deal with a situation of this sort, but I can only say the board bears many burdens and if you see fit to impose additional burdens, I am sure the board will bear up.

MR. MACDONALD: On that point, Mr. Yaremko says this was an imponderable, it seems to me this is no ---

MR. YAREMKO: I was asking the question whether it would be imposing, Professor Finkelman has told us that even if we were to have to impose the impossible on them, they would assume their obligation.

MR. FINKELMAN: I am afraid I have to take



issue with that.

MR. YAREMKO: On page 11, the mandatory clause: I know the Act makes the inclusion of certain provisions mandatory and yet if they are not included, an application has to be made to them for inclusion; is that correct?

MR. FINKELMAN: Yes, because the board would have to write the appropriate clause in the appropriate case.

MR. YAREMKO: Would there not be a clause in the statute which would say all contracts would be deemed to contain the following clause?

MR. MACAULAY: You have a model clause referred to on page 13 .

MR. FINKELMAN: May I explain the situation with regard to these mandatory clauses? The approach of the Minister initially was this: That while certain things should be mandatory, the extent of bargaining should be left to the parties to the greatest possible extent. If the parties will not observe the law and do what they are required to do, then you have to go to the board and have the clause inserted rather than provide that they should be prosecuted for failing to include the clause. I do not recall any case, there may have been one with respect to the no strike no lock-out provision not being inserted in agreement. I do not know of any case but there may have been some that I have no



knowledge of. I think why we have had to write in a recognition clause, in other words, the fact that the statute required the inclusion of this clause has had the desired effect. Now, in so far as the arbitration clause is concerned, we started off in the same way in 1943. There was a requirement that the clause be included and if the parties did not include the clause, then the board could write a clause in. There were very few cases in which the clause was lacking. I should imagine in the 14 years that the legislation has been in existence there have not been more than half a dozen cases in which we have been asked to write in arbitration clauses with most of them going in the first year at the insistence of the board. Now, in arbitration, with respect to an arbitration clause, there is one difficulty. If the clause does not appear in the Act, and a grievance arises and the parties for the first time become aware that there is lacking an arbitration clause and then they apply, there is a delay in getting the clause written into the agreement and then there is a question as to whether that clause has retroactive effect to cover the grievance that has already arisen. In order to avoid that difficulty, when the Act was drawn up, the present Act was drawn up in 1950, we put out a model clause into the Act so we would overcome the difficulty of retroactive problems in dealing with





aggrievances coming up in the future.

MR. MACAULAY: What about the retroactivity where there is a lock-out? What if there is a lock-out? They will say there is no agreement so no lock-out.

MR. FINKELMAN: There is so much in the Act itself. There is so much by way of prosecution. These things are included in the legislation. Now, there is a better way in connection with --

MR. YAREMKO: Why not have them included as model clauses?

MR. FINKELMAN: We could include model clauses, but it serves no purpose because over the years we have had no application of that sort asking for the inclusion of theses clauses. The legislation as it stands has worked well. The more you put into the Act, the more you say "This is what you have to include, the less you will have for collective bargaining", and the purpose in a no-strike clause, right in a clause that means that will meet their purposes much better than the legislature. I say that with all respect to the legislature because in industrial relations the more you leave to the parties the better off you are.

MR. MACAULAY: Yes, but if there was no strike clause, this model clause would apply?

MR. FINKELMAN: In 14 years I cannot recall a single application to the board to have a clause written in so you are toting at windmills here.



THE CHAIRMAN: And knocking down straw men.

MR. WREN: In any hearings before the Board one question that bothers me, do I understand it correctly, the witness is summoned before the board and not entitled to any fee?

MR. FINKELMAN: They are entitled to the same fees as any witness in the courts of law.

MR. WREN: They are paid?

MR. FINKELMAN: Yes, the party subpoenaing the witness has to pay the conduct money and travelling expenses in the same way as in a court of law.

THE CHAIRMAN: Anything else under this article, gentlemen?

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MR. YAREMKO: At the top of page 12 there is "Employers' Organization": I confess I don't know what an employers' organization is.

MR. METZLER: A builders' exchange is a good example, where all contractors are members of the exchange, and they may negotiate with one or two unions and write a general contract covering the operations of those particular contractors.

MR. YAREMKO: This, perhaps, goes back to the same problem: "If any such employer ceases to be a member of the employers' organization during the lifetime of the collective agreement, he is deemed, despite his withdrawal from the organization, to be a party to a like agreement with the trade union." Would the same thing apply, that if the business were sold, would the purchaser be bound by that?

MR. FINKELMAN: No. This is a situation where you have a builders' exchange making an agreement as the builders' exchange, say, with a carpenters' union; there are twenty members of the exchange, and, so long as they remain members of the exchange, they are bound by that agreement, because it is between the exchange on behalf of its members and the union on behalf of its members. Let us assume that firm "A" withdraws from the builders' exchange: in those circumstances the question may arise as to whether by withdrawing firm "A" is now bound by the agreement. In order to remove this, the legislation



states that if firm "A" withdraws from the exchange during the lifetime of the agreement, the agreement follows him. We don't put any compulsion on him to remain a member, but by leaving the exchange he can get rid of the agreement.

MR. YAREMKO: My question is, instead of deciding to leave it, he could set up a corporation and transfer the assets to the corporation and he would not be bound by it?

MR. FINKELMAN: No.

MR. METZLER: The corporation would not be bound.

MR. YAREMKO: That is my point.

MR. JACKSON: The trades council, on page 12; is that also a builders' exchange?

MR. FINKELMAN: No, that is a council of trade unions: the building trades council, the allied printing trades, the joint board of textile unions.

MR. JACKSON: The joining together of various trade unions?

MR. FINKELMAN: Yes. An example would be the Amalgamated Clothing Workers: they operate pretty much today on the basis of an industrial union, but they are broken down traditionally according to craft lines and a variety of other ways. Take, for instance, Tip Top Tailors: they are members of ten locals working. The way an agreement is made there is by the joint board of the Amalgamated





Clothing Workers of America, which represents all the locals. In that particular case the agreement is between the association of employers, the association of clothing manufacturers of Ontario on the one hand and the joint board of the Amalgamated Clothing Workers. On the other hand, say you have an association or council of trade unions making the agreement, the agreement covers all the members of the locals and all the members of the exchange.

MR. METZLER: Another good example would be the project of the Ontario Hydro Electric Power Commission on the Niagara River. There they have, or had, a special building trades council. I think one agreement was signed and it covered something like eighteen trade unions, and they operated under the one agreement -- the carpenters, plumbers, bricklayers -- through the whole gamut -- and they had one agreement.

MR. JACKSON: With clauses pertinent to each special craft?

MR. FINKELMAN: Yes.

MR. MACDONALD: What does our legislation say on the point of extending this beyond the bounds of one province? Does it permit it?

THE CHAIRMAN: We can't do that, surely.

MR. METZLER: Your Legislature only runs to your geographical limits.

MR. MACDONALD: I am thinking of the



problem of packing house workers of negotiating  
across the board.

THE CHAIRMAN: What would they say in  
Saskatchewan if we tried to legislate, governing  
their employees?

MR. FINE: We did negotiate an agreement  
in the Province of Ontario covering packing house  
workers, and it was applicable to the entire Dominion  
by agreement between the parties.

MR. MACDONALD: Because it was agreed to  
by Saskatchewan?

MR. FINE: No, agreed to by the parties.  
Likewise, the same negotiations were applicable in  
the Province of Quebec in one instance.

MR. METZLER: But a collective agreement  
is a collective agreement: if the parties agree they  
are going to be bound by it, it operates wherever  
they have agreed it will operate. It does not offend  
any legislation, because all legislation in any  
province in Canada is directed towards the idea of  
bringing them into agreement with each other.

MR. FINKELMAN: It has also been pointed  
out that constitutionally the Supreme Court of Canada  
has now declared it is impossible for provinces to  
delegate their powers to the Dominion or for the  
Dominion to delegate their powers to the provinces.  
That was the case mentioned yesterday, and we gave  
the citation at the commencement of the afternoon



session yesterday. It is a constitutional problem.

MR. WREN: Coming back to the Deputy Minister's reference to the Hydro agreement at Niagara Falls, what is the difference between employees of Hydro and employees of any other department in the government?

MR. METZLER: Hydro is not a department of government.

MR. WREN: Why would Hydro, as Crown employees, be allowed to organize?

THE CHAIRMAN: They are not Crown employees, and they will tell you that right in the Commission too.

MR. WREN: I don't see any difference.

MR. MACAULAY: It is a difference which holds true in almost every province -- Alberta, Manitoba, Saskatchewan -- the employees of the power corporations there are not considered to be, nor are they, civil servants; nor are they here in Ontario.

THE CHAIRMAN: Is there anything else under this topic?

MR. MACAULAY: On page 13, at the bottom: "Failure to comply with the decision of an arbitrator or arbitration board is an offence punishable on summary conviction . . .": how real is that provision, Mr. Chairman? In the three years for which we have statistics, how many applications have there been to the Board?

MR. FINKELMAN: On that head, I would say



about three or four, perhaps.

MR. MACAULAY: So it is not very common?

MR. FINKELMAN: No.

MR. WREN: On what grounds would the Board deny consent?

MR. FINKELMAN: If it is apparent on the face of the award of the arbitrator that he has acted without jurisdiction or has exceeded his jurisdiction.

MR. WREN: Only in those cases?

MR. FINKELMAN: Yes.

MR. MACAULAY: That is "punishable on summary conviction"? What does that involve?

MR. FINKELMAN: It involves prosecution in the magistrate's court.

THE CHAIRMAN: Under the Summary Convictions Act.

MR. MACAULAY: What penalty can be imposed?

MR. FINKELMAN: The penalties are set out in Section 61:

"If an individual, to a penalty of not more than \$100; or, if a corporation, trade union, council of trade unions or employers' organization, to a penalty of not more than \$1000."

I should add there are very few cases in which there is an application for leave to prosecute a party because of failure to observe an arbitration award where the party, having been present at the hearing, and having heard the deliberations, does not comply





with the award. So that, there is no need to grant leave to prosecute. I am not saying every arbitration award is observed. We have no statistics on that, and I would suggest that you put your question to employers and trade unions when they appear here to make representations.

THE CHAIRMAN: Page 14, gentlemen:  
Duration of Collective Agreements.

MR. JACKSON: Mr. Chairman, halfway down page 14 I see, "On the other hand, the parties may not terminate an agreement, even by mutual consent, before it has run its full course . . ."

THE CHAIRMAN: . . . unless the consent ---

MR. JACKSON: Unless they have mutual consent and apply to the Board. What is the intent of that?

MR. FINKELMAN: The purpose of that is to prevent sweetheart deals which would enable an employer and a union to get together to prevent another union coming in and ousting the union within the open season.

MR. JACKSON: That sweetheart deal you mentioned, what is wrong, if the idea behind the Act is to protect the worker?

MR. FINKELMAN: The point of the matter is this; that applications by a union to oust an incumbent union can only be made at certain times. You have two principles to be reconciled: one is the



8 principle of stability and the other is the democratic principle. The situation is much the same as in the case of an election to any of the governmental bodies. You have an election periodically, and it may be that between the time of the first election and the time another one is called that the party in power has lost the support of the country -- the support of the citizens. However, it is not possible in our system of government for the employees simply to recall the members and put another government in power.

MR. JACKSON: Yes, but you haven't got mutual consent in that example.

MR. FINKELMAN: Well, let me go on: you have there a reconciliation of your principle of stability to keep things on an even keel and your principle of democracy to give the employees an opportunity at appropriate times to indicate they have changed their mind -- that they no longer owe allegiance to the union which represents them, and they want another one, or they don't want one at all. You can't have questions coming before the Board every day as to whether an incumbent union -- the party in power -- still represents the employees. You have these periods when an election may be held, when a representation vote may be held, and there may be an application to oust the incumbent union or to substitute another union for it. Those periods are known in Ontario, in common language, as the open



season. If so, after an agreement has run for five months, the employer and the trade union, which at this particular point may or may not represent the employees and have the confidence of the employees, if they were able to get together and make a new agreement which would extend the closed season for a further period, instead of the employees having an opportunity at the end of the tenth month to vote out the incumbent union, they would be deprived of that right for a much longer period of time. The only thing we want to ascertain in this is whether there is any desire to oust a union. The practice is a very simple one: when the application comes in, there is posting in the plant and the employees are notified of the application before the Board terminate the agreement, and if we don't receive objections from the employees or from any other unit negotiating there, then the consent will be given, and they can then make their own agreement. What I mean by a sweetheart deal is a deal by an employer, playing with a union that has lost the allegiance of the employees, making an agreement to deprive the employees of their right to indicate that they no longer want that union in power.

MR. MYERS: Could I go back to the beginning of page 14: why isn't the decision of the Board subject to review by an Appellate Court?

MR. FINKELMAN: Because it is desirable



in dealing with grievances to dispose of them as quickly as possible. If you had review by the courts, you would have long drawn out procedure.

MR. MYERS: I suppose everything would go to appeal?

MR. FINKELMAN: That is right -- it could go to appeal.

THE CHAIRMAN: Is there anything else under Duration of Collective Agreements?

Renegotiation of Collective Agreements, at the bottom of page 14: are there any questions on this topic?

MR. YAREMKO: At the bottom of page 15 there is this clause:

"There is no provision in the Ontario Act which would require the Labour Relations Board . . .": is that just pointing out a fact to us?

MR. FINKELMAN: Yes, pointing out the fact, because a clause of this sort does appear in the Federal Act.

MR. YAREMKO: This is the clause Mr. Jackson wanted to read over.

MR. FINKELMAN: That is copied from the Federal Act. That is not my invention. Put simply, here is the point: an agreement is made for a year, and under the Federal legislation it is possible to put into the agreement a clause which says that at the end of six months the parties will





negotiate such-and-such clauses -- for instance, the wage scale. You have a series of meetings of that kind; the parties cannot agree. If they cannot agree, under the Federal legislation it is possible for either of the parties to seek conciliation, to go through the conciliation process, and then to have a strike. The principle upon which we operated in this province is that it is desirable to have a minimum period of industrial peace of one year, and if you allow or reopen a clause during the lifetime of the agreement, what you are doing in effect is undermining that year of industrial peace, and whether it is wise or unwise, that is the conclusion we came to and we dropped the clause that appears in the Federal Act.

MR. METZLER: But you will also note there is a requirement in our legislation that there be no strike or lockout during the life of the agreement. So, if you have followed the Federal procedure, it does look a bit inconsistent, because the idea is that once there is an agreement there will be no strike during the lifetime. Well, if you grant them conciliation and the right to strike at the end of five or six months, or lockout, in a sense you are tearing up your agreement.

MR. JACKSON: I suppose industrial peace is desirable, yes, but I suppose you are indirectly giving protection to both employer and



employee to a degree. I am trying to fit it into the Act -- the purpose.

HON. MR. DALEY: Often in making an agreement they put in a reopener, say, on wages, and they say, "We don't know what things will be like six months from now, but there will be a clause in there so you can talk to us about it."

MR. JACKSON: In other words, the contract will still be in full force, but one clause, or clauses, may be reopened?

MR. FINKELMAN: The difficulty there is that you say, "We will limit the discussion to this point", but once you are in bargaining, the whole agreement is opened, because while ostensibly you may agree on that one point, you may be saying out of one corner of your mouth, "If you give us this, we will do this". One thing that should be clear is that in any legislation of this sort you have to reconcile the differences and conflicts, and there is a certain amount of arbitrary decision of where you draw the line. In drawing the line it may be wise or unwise, but you do have to draw a line somewhere. If you don't draw it where you do draw it, you have to draw it elsewhere. There **is** the opportunity where the parties agree on mutual termination of the agreement. They can apply jointly to terminate the agreement, and they would be free to go through the procedure. There **is** the guarantee



that no one is going to be hurt in that process.

THE CHAIRMAN: Is there anything else, gentlemen, on that topic?

Termination of Bargaining Rights, page 16?

MR. MACAULAY: Under Termination of Bargaining Rights, 2(a), professor, on page 17 it says, "In such a case, the Act provides that the Board after having ascertained that a majority have so signified..." -- majority of what?

MR. FINKELMAN: Majority of eligibles; majority of those in the bargaining unit -- 50 per cent plus, in the bargaining unit.

MR. WREN: When you require in the initial stages that a worker sign a statement, and in some cases add a fee, why isn't a fee required in applications for decertification as a sign of good faith?

MR. METZLER: You have paid a dollar to join the organization.

THE CHAIRMAN: You should not pay a dollar to get out of it.

MR. WREN: But it is obvious your loyalties have changed, or you would not be applying for decertification.

MR. METZLER: When you apply for decertification, if you are referring to a group of employees, you are actually wanting to disband an organization and remove it from the plant and go on to individual bargaining, or no bargaining at all.



MR. MACDONALD: Mr. Chairman, haven't we got an imbalance here: the tedious procedure of having to get cards and certain monetary consideration, and everything, makes it a much more difficult process than it is to terminate the bargaining rights. All you have to do is have a petition.

MR. FINKELMAN: And a vote. The vote is mandatory except where the union bows out.

MR. WREN: If the incumbent union does not agree to bow out, the vote is mandatory?

MR. FINKELMAN: Yes.

MR. MACAULAY: You may have, even, the application and a petition and a vote, and all things like that, to get the certification.

MR. MACDONALD: You have much more than a petition when you are trying to get it established.

MR. FINKELMAN: We have attempted to balance the thing. Whether we have succeeded is another question. The way it was done is that you need the 45 per cent to get a vote in the case of application for certification; you need 50 per cent minimum to get a vote for termination of bargaining rights. I don't know whether we have succeeded or not. There has been an attempt to create a balance.

MR. WREN: It seems we have made it awfully simple to decertify and relatively difficult to certify.

MR. FINKELMAN: You would not cure that





situation by requiring one dollar in the termination of bargaining rights. You might do it by raising the percentage or something of that sort, but you can't do it by requiring the payment of one dollar.

MR. YAREMKO: Would it be possible to get the same statistics on this as those on the vote on the other?

MR. FINKELMAN: Yes.

MR. YAREMKO: Are there many applications for replacement?

THE CHAIRMAN: Decertification.

MR. FINKELMAN: Well, termination of bargaining rights is the technical term. "Decertification" is a loose term that has crept into Ontario from other jurisdictions, because in other jurisdictions bargaining rights depend on a certificate, so you can decertify and the certificate can remain in existence until it is destroyed. Our principle here is quite different: we proceed more on what we call bargaining rights than certification. As to the number of cases in which application is made, they run two, three, four a month, I would say, as compared to anywhere from fifty, in what we used to call a normal month, to one hundred in what we call a normal month now.

MR. MACAULAY: For what?

MR. FINKELMAN: For certification.

MR. YAREMKO: I don't know whether there



is anything to be gained from it, but say, taking a six-months' period, and giving us the statistics on the application for termination of bargaining rights, and also providing us with the results of the vote that preceded -- the representation vote; and then, the same vote that was taken in regard to those cases for applications for termination. I don't know whether we can learn anything from that, or whether we could come to any conclusion.

MR. FINKELMAN: I can assure you you are not going to learn very much from them, but we will get them for you, because when you have such a small number you are not going to be able to draw any deductions from them that are going to be valid. However, we will get them.

MR. MACAULAY: Can you tell us what proportion of the applications arise by reason of another union making application, and what proportion are by the employees applying?

MR. FINKELMAN: As far as the official record goes, no trade union can apply for termination of bargaining rights of another trade union. The application has to be made by the employees themselves. So that, we would not be able to tell you officially that there is any trade union behind the scenes. We have suspicion in some cases that some unions in the merger period of brotherly love that we are going through today won't take over the members that were



in another trade union, and therefore they say, "Go and get your divorce, and come to us and we will talk marriage." You do get a number of cases now -- we suspect this is the situation -- where they will apply to terminate bargaining rights and then apply afresh for certification. I am not prepared to give you statistics on that; it is based entirely on rumour.

MR. MACAULAY: Well, surely, termination of bargaining rights can be brought about by certain different groups and in certain different ways: as I understand it, and as set out on pages 16 and 17, is it possible to find out the number of applications that fall in each one of the different categories?

MR. FINKELMAN: Certainly, we will be glad to give you that information.

MR. MACAULAY: So, in effect, one union -- and I will use this word "decertify" -- in effect one union can be decertified by an application of another union being certified?

MR. FINKELMAN: Oh, yes, that is what we call displacement. When a rival union applies for certification and is certified, it ousts the incumbent. That is covered in the memorandum here.

MR. MACAULAY: Yes, but what will they be under? They won't be shown as "decertifications".

MR. FINKELMAN: No, no.

MR. MACAULAY: It will be shown as "certifications"?



MR. FINKELMAN: That is right.

MR. MACAULAY: So, therefore, the number of decertifications which your records do show won't show all that there really are, in that some people -- the applications of some may be directed towards certification.

THE CHAIRMAN: As distinguished between "displacement" and "termination"?

MR. FINKELMAN: But when there is displacement, another union takes the place of the one displaced. There is another union comes in, and in displacement cases you have all the craft lines -- the operating engineers coming in -- to carve out their craft. You are not going to learn anything from displacement figures as to what happens in termination of bargaining rights.

MR. MYERS: There is no restriction on one union trying to displace another in seeking the consent of members, and so on?

MR. FINKELMAN: No. It has to appeal to the employees for their support, and if it can induce them to do so, they can go through the proper channels.

THE CHAIRMAN: Anything else, gentlemen?  
Page 20, Succession to Bargaining Rights"

MR. MACAULAY: "If any question arises as to the right of a trade union to act as a successor, the Board . . .": this is succession by a





trade union, but not the other way around?

MR. FINKELMAN: That is right.

MR. MACAULAY: What is the incidence of these? How frequently are applications dealing with this matter brought before you?

MR. FINKELMAN: We have had quite a few. I can't give you the figures offhand, but I can get you the figures.

MR. MACAULAY: If you are to get us the figures of the number of applications, could you have them broken down in the same way as you have referred to them on page 20, namely, those who have given declarations where they have acquired them, and not acquired them?

MR. FINKELMAN: I think there has been only one case where we have refused a declaration, and that was in connection with the provincial Hydro, where the Board came to the conclusion there was no change in the entity, and therefore no question of succession. Apart from that, I believe the declaration has been issued in every application.

MR. MACAULAY: Do you normally order a vote?

MR. FINKELMAN: No. We have ordered a vote in one case, I think, so far.

MR. SPOONER: Is that legislation comparatively new?

THE CHAIRMAN: 1956.



MR. FINKELMAN: This is 1956.

THE CHAIRMAN: Is there anything else under that topic, gentlemen?

Page 21, Unfair Practices?

MR. MACAULAY: On page 23, under Unfair Practices -- and I know nothing about this, and I am simply asking a question -- "In furtherance of the principle of this provision, the Board may not certify any trade union if any employer has participated in its formation or administration or has contributed financial or other support to it." What if the situation were reversed, where a union might have contributed to a company?

THE CHAIRMAN: Where what?

MR. MACAULAY: Where a union might have contributed to an operation?

THE CHAIRMAN: Is there any evidence that has ever taken place?

MR. MACAULAY: I don't know.

MR. FINKELMAN: It has happened in the United States where unions have rescued the employers.

MR. WREN: That has happened in Winnipeg in the clothing trade.

MR. FINKELMAN: I know in the United States it is not at all uncommon, where an employer is about to close his business for want of working capital that a union will make a loan to the employer, or where the employees will collectively make a loan.



THE CHAIRMAN: I suppose the question here is if it could happen here, is there any provision covering it?

MR. FINKELMAN: There is no provision in the Act forbidding that.

MR. MYERS: It has happened where the employees take a reduction in pay, and it is treated as a loan.

MR. MACAULAY: Well, it does not under the Act constitute an unfair practice?

MR. FINKELMAN: No.

MR. WREN: It is in a competitive field. It is, in the field of business competition, very desirable for one competitor to get his hand on some extra capital.

MR. MACDONALD: I want to go back to page 22, to a sentence in the middle of the page. My question is going to involve policy, so I don't know to whom I will direct it, but what is the thinking of the Government on this question of check-off? We have six jurisdictions in Canada where check-off is part of the legislation. What is the thinking of the Government on this issue as to why it should not be part of the Act?

HON. MR. DALEY: The thinking of the Government up to this time, as you probably know as well as I do, has been that check-off is considered to be something for the bargaining table, something



for negotiation. If you make check-off mandatory, you simply take away another item from the bargaining table. Often it is bargained off or bargained in for something else during the negotiations. The Government's thinking up to this time has been that, well, that is a fair thing to bargain for.

MR. MACDONALD: Assuming we work on the assumption that unions are a desirable thing and should have some security, at least six other jurisdictions have acknowledged it is valid they should have check-off as part of the legislation.

HON. MR. DALEY: Well, as of today the problem of the check-off is diminishing at quite a fast rate, but there is still a considerable portion of our industry who feel they should still have the right to give the check-off or not to give it.

MR. MACDONALD: I have heard it said in some union circles that one of the reasons we haven't got it is because it is considered useful in conciliation to have this as another element of negotiation and bargaining. Is there any validity in that?

MR. FINE: I would say no, Mr. Macdonald. Today the check-off does not bother us at all -- or, very rarely bothers us, except perhaps in one area.

MR. MACDONALD: Well, if it is not, why is it so sacrosanct ---

MR. FINE: You asked me a question and I answered it to the best of my ability.



1. The first part of the paper is devoted to a general discussion of the problem of the existence of solutions of the system of equations

which are satisfied by the functions  $u_i(x, y, z)$  and  $v_i(x, y, z)$  in the domain  $D$  of the space  $E_3$  bounded by the surface  $S$ .

2. In the second part of the paper the author considers the problem of the existence of solutions of the system of equations

which are satisfied by the functions  $u_i(x, y, z)$  and  $v_i(x, y, z)$  in the domain  $D$  of the space  $E_3$  bounded by the surface  $S$ .

3. In the third part of the paper the author considers the problem of the existence of solutions of the system of equations

which are satisfied by the functions  $u_i(x, y, z)$  and  $v_i(x, y, z)$  in the domain  $D$  of the space  $E_3$  bounded by the surface  $S$ .

4. In the fourth part of the paper the author considers the problem of the existence of solutions of the system of equations

which are satisfied by the functions  $u_i(x, y, z)$  and  $v_i(x, y, z)$  in the domain  $D$  of the space  $E_3$  bounded by the surface  $S$ .

5. In the fifth part of the paper the author considers the problem of the existence of solutions of the system of equations

which are satisfied by the functions  $u_i(x, y, z)$  and  $v_i(x, y, z)$  in the domain  $D$  of the space  $E_3$  bounded by the surface  $S$ .

THE CHAIRMAN: A further question is out of order. Why should Mr. Fine be asked what the policy of the Government is?

MR. MACDONALD: May I direct my question to the Minister. In southern Ontario -- apart from a few unions in the north -- this is not a bargaining instrument at all. Why should we be so stubborn to refuse to follow other jurisdictions?

MR. JACKSON: Well, is it right?

MR. MACDONALD: Yes.

MR. JACKSON: The other six are right?

THE CHAIRMAN: That would be something for the Ontario Legislature to decide. That question is out of order and need not be answered.

MR. JACKSON: Could I ask a question on page 22: do I understand that last part --

"... no person is deemed to have ceased to be an employee by reason only of his ceasing to work for his employer as the result of a lockout or strike or by reason only of his being dismissed by his employer contrary to the Act or to a collective agreement."

In other words, am I right in assuming that if he is dismissed as a result of something that is contrary to the Act or the agreement, he is not really dismissed?

MR. FINKELMAN: He does not cease to be



an employee. Any rights he has under the Act as an employee remain with him.

MR. JACKSON: Even thought he may be off the payroll?

MR. FINKELMAN: Yes, as far as the employer is concerned.

MR. YAREMKO: Further up the page:

" . . . attempt at the place at which any employee works . . . " --

what does that mean? The place -- does that mean at his machine or within the confines of the company's grounds?

MR. FINKELMAN: We have taken that to mean on the premises where he is actually engaged at work -- in the factory -- while he is at work.

MR. YAREMKO: Would it be at his machine, or in the washroom ---

THE CHAIRMAN: Any place on the premises.

MR. FINKELMAN: We haven't tied it down. An employer is permitted to say no one shall canvass for a union or against a union on his premises during working hours.

MR. SPOONER: Within the boundaries of the factory?

MR. FINKELMAN: Yes. That does not mean anyone who violates that is guilty of an offence for which he is punishable under the Act.

MR. MYERS: He would be a trespasser?

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MR. FINKELMAN: No, it is not a question of trespass. Take a case of John Doe working at his machine, and another employee comes over and starts saying, "Why don't you join the union", or "Why should you join the union?" Or "Get out of the union", or something of that sort: In doing that the employee is in one sense exercising his rights under the Act, or, to put it another and more correct way, if the employer were to discharge that person for wasting time, the employer might be charged with seeking, by threat of dismissal or by any other way, to cause an employee to refrain from exercising his rights under the Act.

MR. WREN: So, it has no effect.

MR. FINKELMAN: Well, just a moment. The purpose of Section 48(2) is to enable the employer to take disciplinary action in a proper case without being charged with an offence under Section 47.

MR. METZLER: If you didn't have Section 48(2), they could canvass or do anything they liked.

MR. FINKELMAN: It is conceivable an employee might be charged under Section 47 for having canvassed during working hours on company premises, and, to avoid that, Section 48 exempts proper disciplinary action.

MR. WREN: Theoretically, if an employer issues such instructions that there is to be no soliciting for or against, where is the



representation to be made? Off the premises in off working hours?

MR. FINKELMAN: Once he is through, or outside of working hours he is free to act, and any interference with him would constitute a violation under Section 47.

MR. WREN: Yes, but where the employer has issued that instruction, then the employee must not take part in any organization activity during working hours?

MR. METZLER: He is running the risk of being disciplined for doing so.

MR. WREN: Are there many such orders issued?

MR. FINKELMAN: I wouldn't know.

MR. REAUME: I was wondering, inasmuch as a whole lot of these questions are not actually in order -- most of them are out of order -- are we going to leave all this business about voluntary check-off, or are we coming back to that?

THE CHAIRMAN: What page is that?

MR. REAUME: Page 21, 22 and 23.

THE CHAIRMAN: Well, that is the topic we are on.

MR. REAUME: I was wondering if we ask a question, and it is out of order, is that the end of it?

THE CHAIRMAN: Oh, no.





MR. MACDONALD: Is it out of order to ask a policy question of the Minister?

THE CHAIRMAN: I think it is, yes.

MR. MACDONALD: Well, to whom do we direct policy questions?

THE CHAIRMAN: I don't think you can ask anybody policy questions.

MR. MACDONALD: Well, what is our function in this Committee?

THE CHAIRMAN: Our function on this Committee is to decide the policy we think should relate to the Labour Relations Act.

MR. MACDONALD: Without any right to question the Minister on the thinking of the Government?

THE CHAIRMAN: I don't think the Minister has any right to speak on behalf of the Government, unless he is so authorized or feels he is so empowered, and he has not indicated to me he is. We are not here to question the thinking of the Government. We are here to decide what we think is right or wrong about this Act, despite the thinking of the Government.

MR. MACDONALD: When we get onto an issue which is controversial, your ruling comes down very quickly, but when it is not controversial it can go on sometimes for the best part of an hour.

THE CHAIRMAN: If you are imputing to me imputations that are not proper I would ask you



to withdraw that statement. I have been very lenient with you and all the members. I made a ruling at the start that where a question of policy was concerned the question should not be answered. You have tried several ways to get around that ruling, and on each occasion I have made the ruling, and I am going to stick to it. If this Committee decides my ruling is wrong, they have the right to appeal.

MR. MACDONALD: It seems to me the normal procedure in committees is that one of the most useful things is to elicit the experience of the Minister.

THE CHAIRMAN: You are saying, "What is the thinking of the Government?" How the Minister can say in detail what is the thinking of the Government on any particular aspect of this Act without the members of the Government being here is more than I can understand.

MR. MACDONALD: Is it within the terms of your ruling to ask the Minister what he thinks?

THE CHAIRMAN: It is within the terms of my ruling that the Minister should not be asked to tell this Committee what he thinks.

MR. MACDONALD: This is certainly a novel and severe restriction on the activities of the Committee.

MR. MACAULAY: I would appeal to the Committee from the ruling of the Chairman that the Minister may not be asked what he thinks. I appeal to



the Committee to overrule the Chairman to that extent, and I am going to vote against it. We have a Minister called here to give us the benefit of his advice, and not be able to ask him what he thinks.

MR. MYERS: I think you can assume that the existing legislation reflects the Government thinking.

THE CHAIRMAN: Definitely.

MR. MACDONALD: With all respect to Mr. Myers, that is nonsense. The reason this Committee has been set up is to review the existing legislation in the light of experience, and it is just conceivable the Government will have changed its thinking.

MR. MYERS: The Government says, "We think as this Act is, and if you can tell us better, tell us."

MR. MACDONALD: I can think of a lot of the Standing Committees where the Minister indicated to us -- on the Standing Committee on Labour that he would have no objection.

MR. MYERS: The Government must believe that the legislation it has passed is the legislation that they think is best.

MR. MACDONALD: Fourteen years ago?

MR. MYERS: They have been amending it every year.

THE CHAIRMAN: Gentlemen, there is a motion by Mr. Macaulay to appeal my ruling. Has that motion been seconded?



MR. MACDONALD: Yes, seconded.

THE CHAIRMAN: It is moved by Mr. Macaulay and seconded by Mr. Macdonald that the ruling of the Chair be appealed, and be reversed, I would take it. All those in favour of the motion?

MR. YAREMKO: Well, just what is the motion?

THE CHAIRMAN: Let us have your motion, Mr. Macaulay.

MR. MACAULAY: You gave a ruling that the Minister could not express to this Committee what he thought about a given subject on which he was asked, and it is my opinion that the Minister should be able to express his opinion as to what he thinks in connection with the question which is asked.

THE CHAIRMAN: And what is your motion?

MR. MACAULAY: You have ruled he may not answer what he thinks, and I move that your decision be reversed and that he be permitted to answer what he thinks in relation to a question he is asked.

THE CHAIRMAN: That is what you second, Mr. Macdonald?

MR. MACDONALD: Yes.

MR. YAREMKO: Mr. Chairman, isn't there a difference between the Minister indicating to us his opinions, as apart from us cross-examining him as to what the policy is or the reasons are for the policy? If the Minister, as in other committees, has indicated





to the committee that a certain section -- he has indicated not necessarily on a question, but voluntarily indicated that his opinion might be such-and-such and that a particular section might be amended. That is different from cross-examining the Minister on what the policy is, and I agree with Mr. Myers that the policy is laid down in this book, and this Committee is sitting to decide whether this Committee will recommend to the Legislature, and in turn to the Government, that this policy should be changed. There are certain members on this Committee who have already, on the second day of this sitting, without having heard any of the evidence to be presented to this Committee, made up their minds that a certain section should be deleted -- on the second day, without having heard anything more at all. I think we are here to learn as much as we can from whatever source we can.

MR. MACDONALD: Hear, hear; that is why we want to question the Minister.

MR. YAREMKO: If the Minister wants to give us the benefit of his advice, I think it is up to the Minister.

MR. MACDONALD: But the Chairman has said he cannot give us his advice.

THE CHAIRMAN: I have said nothing of the kind.

MR. MACDONALD: You have stated we can't



put questions of policy to the Minister.

THE CHAIRMAN: You can't put a question of policy to the Minister.

MR. YAREMKO: Which means we are not permitted to cross-examine the Minister on the policy.

THE CHAIRMAN: In any event, that is my ruling, and there is a motion before the Committee.

MR. MACDONALD: That is just frustrating the whole progress of this Committee.

THE CHAIRMAN: The progress of this Committee will be frustrated by others, not by myself, Mr. Macdonald.

MR. MACAULAY: Since this is my motion, I didn't intend to put before the Committee an appeal from the Chairman on the question of asking the Minister government policy. I don't think the Minister is in a position to discuss government policy, but I do think that I or anybody else in this Committee should be entitled to ask the Minister his opinion on a given subject or a given section, without asking him what the government policy may be. I attempted to ask Mr. Fine whether, in his opinion, and with his experience, can he suggest a way -- and he doesn't have to answer the question -- in which conciliation time could be shortened. I am not asking for government policy. I am not asking for any policy.

MR. MACDONALD: Earlier, Mr. ~~Chairman~~, on



the discussion on Section 78, the Minister volunteered his opinion that on any occasion when a municipality was going to avail themselves of the right of Section 78, that he advised against it.

THE CHAIRMAN: Well, that is something that he has done. Now you are asking him what he thinks about something -- whether it should be so or not.

MR. MACDONALD: But we are not permitted to pursue this and to find out beyond the flat statement of the Minister what his thinking is, as a guide to coming up with potential changes in the legislation.

MR. MACAULAY: I don't want to have a motion before the Committee which deals with government policy.

THE CHAIRMAN: Well, that is the motion.

MR. MACAULAY: Well, that was not my motion, because on the record, if we went back to it, you said this: "My ruling is that the Minister may not be asked what he thinks", and it was at that time I said, "Then I appeal from the ruling", and I appeal from the ruling on the grounds I think the Minister is entitled before this Committee to say what he thinks.

THE CHAIRMAN: Well, I am now going to put the motion.

MR. MACAULAY: Well, I am withdrawing it, as explained and advertised by my friend.



THE CHAIRMAN: I do not think you are free to withdraw it.

MR. WREN: I would like to make an amendment to that motion. I would like to move in amendment that the Minister be permitted to express his thinking on certain subjects if he so gives his consent, if it is previously explained to him that it might be a matter of policy -- politics or policy.

THE CHAIRMAN: I should think, as a matter of courtesy to the Minister, that if there is any question any member of this Committee desires the Minister to answer, that it should be submitted to him in writing.

MR. MACDONALD: Are we going to turn this into a panty-waist effort?

THE CHAIRMAN: The only one who would make it a panty-waist effort would be yourself, because you are inclined that way.

MR. YAREMKO: I think this Committee is indebted to the relevant Minister for paying us the courtesy of sitting in on our sessions. There is nothing to have prevented the Minister from staying away from the sessions of the Committee, and no one would have had the nerve or audacity, nor would it have been proper, to have said that the Minister should have been here. I think the Minister has paid us the courtesy of staying with us and giving, if he desires, an expression of opinion on the Act.





MR. REAUME: That is all we are asking for.

MR. YAREMKO: There is a difference between the Minister volunteering to express an opinion, and cross-examining him on that.

THE CHAIRMAN: It is now four o'clock, gentlemen, and this meeting will adjourn until eleven o'clock tomorrow morning.

---The Committee adjourned at 4.00 p.m. until

11.00 a.m., Wednesday, June 26th, 1957.

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SPECIAL COMMITTEE ON LABOUR RELATIONS ACT

Volume 3

Wednesday, June 26, 1957

Correction  
1 328

Merch - 309  
Hlaad - 313-15  
Jal - 315  
Chamber - 317-18



LEGISLATIVE ASSEMBLY OF ONTARIOSELECT COMMITTEE ON LABOUR RELATIONS

Committee Room No. 1, Parliament Buildings,  
Queen's Park  
Toronto Ontario

Wednesday,  
June 26, 1957

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JAMES A. MALONEY Chairman

HAROLD PERKINS Secretary

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MEMBERS PRESENT:

G.E. Jackson  
Robert Macaulay  
Donald C. Morningstar  
Arthur J. Reaume  
H. Leslie Rowntree  
J. W. Spooner  
Albert Wren  
John Yaremko

APPEARANCES:

Hon. Chas Daley	Minister of Labour
Mr. J.B. Metzler	Deputy Minister of Labour
Mr. Louis Fine	Chief Conciliation Officer
Mr. J. Finkelman	Chairman, Labour Relations Board
Mr. H.A. Logan	





THE CHAIRMAN: Gentlemen, I am sorry about the delay in starting this meeting but the subcommittee were meeting with Mr. Lewis and the reporters concerning the matter of supplying additional copies of the transcript. Is that Committee to give that report now?

MR. YAREMKO: Yes. The Committee of the Labour Relations Act recommend the proper authority for the distribution of the Hansard of the proceedings of the Committee be made available to the public; of which, in the number of 80 copies, to the office of the Clerk of the Assembly; 2 copies to the Press Gallery; 2 copies to the Legislative Library; 1 copy to the office of the Prime Minister; 1 copy each to the various Party Officers; 1 copy to the Speaker's office; 1 copy to the Clerk's office; 1 copy to the Provincial Archivist and the remainder to be distributed by the Clerk of the House with preference being given to those submitting briefs to the Committee.

THE CHAIRMAN: Have you arrived at a figure?

MR. YAREMKO: 80, I think, sir.

THE CHAIRMAN: With the reporters?

MR. YAREMKO: Yes, that figure has been arrived at and it will be the contract we entered into. We are making recommendations that the Hansard Reporters ---



THE CHAIRMAN: Would you mind telling the Committee the price?

MR. YAREMKO: Three and a half cents per page.

MR. ROWNTREE: That is a good price.

THE CHAIRMAN: As a Committee, I think we have authority to deal with the report and to decide on it if you care to put that in the form of a motion.

MR. YAREMKO: I move the report of the Committee be adopted.

MR. MACAULAY: I second that motion.

MR. ROWNTREE: Is three and a half cents the total cost or is it ten cents and the Committee picks up the difference?

THE CHAIRMAN: The Committee is picking up no difference.

MR. YAREMKO: If the recommendation of the Committee is adopted by the proper authority, then these will be made available free of charge.

THE CHAIRMAN: That is my understanding. You have made a provision that the officials of the Department of Labour are to be provided with copies.

MR. WREN: Is that not in the original 20?

THE CHAIRMAN: How many would the Department need?

MR. METZLER: At least four.



4 THE CHAIRMAN: At least four and perhaps you had better make it five?

MR. JACKSON: Is that not covered in the original 20?

MR. WREN: This is dealing with the 80.

THE CHAIRMAN: It has been moved by Mr. Yaremko and seconded Mr. Macaulay that the report of the subcommittee be adopted. Is there any discussion? All in favour of the report? I declare the report adopted unanimously.

MR. YAREMKO: Following up the report of the Committee, the Committee also wants to suggest to the Committee as a whole that those presenting briefs be requested to supply briefs in the number of 100 copies which we felt would not work a hardship on those presenting briefs as invariably, if they are going to mimeograph 20, they can easily mimeograph 100 copies and that the briefs presented be not included in Hansard transcript of the reports. In that way, the cost of the whole proceedings will be minimized. In other words, a copy of the proceedings plus the briefs to be presented will be delivered to the public.

THE CHAIRMAN: That is the secretary is to instruct anyone presenting briefs they must do so in the number of 100 copies.

MR. YAREMKO: With the suggestion also included that if the making of 100 copies would work



5 a hardship or present difficulties to those presenting the brief, that a smaller number would be acceptable as long as they have sufficient for the members of the Committee.

THE CHAIRMAN: Thank you very much, gentlemen. Now, at adjournment yesterday, we were dealing with the motion of Mr. Macaulay and an amendment by Mr. Wren.

MR. MACAULAY: Mr. Chairman, yesterday afternoon I made a motion for the consideration of the Committee and when I had finished making my motion, my friend, Mr. Macdonald, then interpreted it to the Committee, and it appeared to me that the motion ended up being something I had not moved at all and it occurred to me even more so because my friend, Mr. Wren, then moved an amendment to my motion which was inherent in my motion to start with. Therefore, I have written it out so there can be no doubt as to what my motion is, the phraseology of it, and it deals with two aspects, as I tried to indicate yesterday. I understand the rules of the legislature to be that no question of government policy can be put to a Minister. That being so, I think, as I said yesterday, no government policy or questions directed towards government policy should be put to a Civil servant or a Minister appearing before the Committee. As Mr. Myers, I think rightly, indicated the Act itself is the government's policy.

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However, I did feel, with respect, that the Chairman was wrong in saying that questions should not be put to a witness with reference to his own experience in the matter, and therefore, at least I take that to be his ruling, because I feel that the gentlemen before us who have appeared -- Mr. Daley, Mr. Fine, Professor Finkelman and Mr. Metzler are leaders in their field and have a great deal to offer us as a result of their personal experience and I, frankly, would like to hear it.

I move, therefore, and this is the motion I put yesterday -- I move that this Committee be permitted to ask questions directed towards the experience of any witness as to any matters within the terms of reference of this Committee saving that such questions may not seek to obtain from such witness what he understands to have been or now to be government policy. I will give it to you, Mr. Chairman, and I do not want anybody misinterpreting what I have said.

THE CHAIRMAN: Gentlemen, my ruling yesterday was directed towards the suggestion that any witness should be asked as to government policy and also that any witness of the Department should be asked as to his opinion as to certain sections of the Act or any section of the Act and I feel that the ruling I made, which was a ruling on the motion as I interpreted it to be, was the correct one and I



7 still feel that that is so. This motion that Mr. Macaulay has just made, which he states is the motion he moved yesterday, certainly required no appeal from the ruling of the chair and is a motion I am quite prepared to put to this Committee.

MR. MACDONALD: Would you please read it again?

MR. MACAULAY: I move this Committee be permitted to ask questions directed towards the experience of any witness as to any matters within the terms of reference of this Committee, saving that such questions may not seek to obtain from such a witness what he understands to have been or now to be government policy.

MR. WREN: Mr. Chairman, the motion yesterday was clearly an appeal from the ruling of the chair. This indicates, in effect, the appeal from the ruling of the chair be withdrawn and I do not think we should discuss it any more. //

THE CHAIRMAN: Mr. Macaulay, is it my understanding you are in agreement with the ruling and no questions should be asked as to the government's policy or the opinion of the Department officials as to any section of the Act.

MR. MACAULAY: I am, to the extent that I understand the ruling. For instance, when I asked as I did Mr. Fine, whether from his experience he can indicate any ways by which conciliation



procedure could be shortened ---.

MR. WREN: You were discussing the refusal or the indication of the refusal of the Chair to permit an answer from the Minister.

MR. MACAULAY: I pointed out when I made my motion that very example.

MR. WREN: It is clearly understood that civil servants are not to answer questions of a policy and I do not think any member of the Committee thinks otherwise.

MR. YAREMKO: There was one member of the Committee that thought so.

MR. MACAULAY: I tried to make my point clear and obviously it was misunderstood or Mr. Wren would not have moved the amendment.

MR. WREN: I understood your motion to be an appeal from the ruling of the chair that the Minister would not be permitted to state government policy.

MR. MACAULAY: No, I was appealing the further part of his ruling, that the ruling, in his opinion, encompassed the fact that you could not ask a question of the Minister as to his experience or opinion or something. I cannot remember exactly the phraseology. It was that part I was disturbed about, not the question of government policy, the rules of the House are clear on that point. It was as to the question of opinion and experience I was



concerned about.

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MR. REAUME: If we ask the question of any of the civil servants, the Minister or any of them, and they do not want to answer the question, you can feel quite certain they will not answer. I do not see the reason for all this argument. I think it can well stand that if, in the opinion of the Minister, he does not want to answer a question concerning government policy, he will not answer it.

THE CHAIRMAN: It goes a little further, Mr. Reaume. The chair has ruled the witnesses may not be asked questions as to what the government policy is or as to what the personal opinion of the department official might be. Do I understand, Mr. Macaulay, from those views, your desire now to withdraw your motion?

MR. MACAULAY: That is the motion I put?

THE CHAIRMAN: Your motion to appeal from the ruling of the chair which is on the record.

MR. MACAULAY: I take that to be the appeal from the ruling as I understood, sir, the ruling to be.

THE CHAIRMAN: I did not make any such ruling.

MR. MORNINGSTAR: I think there should be some clarification of this motion. There was some misunderstanding yesterday as Mr. Yaremko pointed out. It is something else that needs guidance.





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MR. MACDONALD: Mr. Chairman, if I might just say a few words: I do not know exactly what this resolution means. As far as I am concerned it is a different thing than what we were discussing yesterday. It has been suggested I had misinterpreted what was said yesterday. I think what was said yesterday was very clear and I do not think I have misinterpreted it at all. Earlier in the day what, in effect, were policy questions were put to civil servants and, let me emphasize quite rightly, the civil servants said they should not be asked to comment on what was essentially a policy question. It is within their rights to do that and I think it was sound judgment and I do not think civil servants should be put in that position. I thought the ruling was whether or not we can put a question to the Minister even though his response is that it is government policy and the only issue involved here is should we ask what is the government policy or should we ask what the Minister's view is?

THE CHAIRMAN: The way you put it was the Minister's thinking.

MR. MACDONALD: The Minister's thinking or the Minister's view.

THE CHAIRMAN: And I ruled that question should not be asked.

MR. MACDONALD: My point was: Surely if the Minister has been the top policy custodian



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for those departments for a period of 13 years or 11 years or whatever it is, he has gained certain experience and come to certain conclusions and his conclusions will be an important guide for us in a revision of the Act and if there is no likely revision of the Act, why was this set up?

THE CHAIRMAN: That is the very purpose; if it requires a revision of the Act, we are the ones to do so and in doing so, we are not concerned with the opinion of any person.

MR. MACDONALD: In other words, you exclude the experience of the person who has been in a position to gather the greatest experience.

THE CHAIRMAN: You are distorting it again, Mr. Macdonald, as you are so prone to do. What you were trying to find out in the first instance, and the record will bear me out, is what is the government policy and when I ruled that out, what do you think is the Minister's thinking? I ruled you could not ask that.

MR. MACDONALD: The Minister, two or three times during the day, had expressed his own view. Was he out of order?

THE CHAIRMAN: As to certain things that had followed.

MR. MACDONALD: No, as to views. He stated as to section 78 that it had been his advice to the municipalities they should not avail themselves of the power invoked by section 78. That



was clearly an indication of the Minister's thinking on this controversial point and it seems to me it should not be changed and that we should have the right to put a question to the Minister in the light of his views in regard to the operation of his Act.

THE CHAIRMAN: I suggest it is quite proper to ask the Minister what his experience has been but not what recommendations he has to make. I do not think he should be put in that position because it does ultimately involve government policy.

MR. MACDONALD: If he gives clear exposition of what his experience has been, by implication, it would be clear what he would suggest in the way of a change.

THE CHAIRMAN: I do not think there is any desire on the part of the chair to prevent him saying so nor did the chair so rule.

HON. MR. DALEY: Mr. Chairman, gentlemen, I feel the position in which I have been placed is becoming rather embarrassing.

MR. MACDONALD: I agree, very much so.

HON. MR. DALEY: I am here voluntarily; I have not been subpoenaed. I am here because I am the head of the Department. With the assistance and the advice and the guidance of my colleagues in the making of government policy, you will see that many times in the making of that policy, I have to



differ with my colleagues and as I said in my opening remarks, eventually I have to make a decision. I am here because I am deeply interested in the development. If there is a way to amend and improve this Act, that is what I want to know and I want to be sure something is not done that might create a disruption to make the road even more difficult than it is to travel. Along that line, I brought my three top men; my Deputy Minister, Professor Finkelman, and Mr. Fine. I instructed them as soon as this Committee was formed, to compile anything that would be of interest to this Committee. I want you to know that in my opinion we have nothing to hide. Everything, as far as I am concerned, can be right in the open as regards to the administration of the Labour Relations Act. As long as you remember that these gentlemen here are not policy makers; they are administrators and there are certain questions as to what they might think that I feel should not be asked of them and that they should not be expected to answer. They administer the Act as the government has approved. As far as I am personally concerned, without being a member of the Committee, I want to be as far as is considered right, a part of that Committee. If someone asked me a question that I did not want to answer, I do not feel I should have to answer, but if there is discussion I feel as head of this Department I should be allowed to





take some part in it. As these meetings go on, this is the formative portion of the session, but later you will get down to a point where you are actually going to do something definite and concrete. I would not like to be in a position where I cannot even say a word on these things whether I am opposed or in favour. I would like to be considered more of a freelance to give any guidance that I can to the Committee without being out of order because as long as I remain here and no doubt the meeting will go on indefinitely, and I do not want to be absolutely tongue-tied in these things. However, there are questions, that if asked and it is the policy of government or something which in my discretion I do not feel I should answer, I will not answer.

I will just close the few remarks by saying in my original announcement before this Committee I made it clear that my department would offer every co-operation to this Committee and that is the way it is as of now.

MR. MACDONALD: Mr. Chairman, I have absolutely no criticism or objection at all to what the Minister has just stated and my understanding yesterday that your ruling was that we could not ask questions of the Minister as to thinking at all.



THE CHAIRMAN: I do not think you can. If the Minister wants to volunteer a statement, and each time he indicated he wanted to say something I have called on him ---.

MR. YAREMKO: Mr. Macaulay has used two words in his motion; as to the asking of questions of experience and as to the asking of questions of policy. All the members of this Committee have been here sufficiently long that in our minds we know to a fairly good degree what a question of policy is. With reference to experience, any question should be asked by any member of the Committee, but I do not think that the Minister should be in a position of having a question put and being forced into a position of saying, I cannot answer that question because it is a question of policy." I think the members of this Committee from their experience know what a question of policy is and that motion should be voted upon in order to set a pattern that the members will refrain deliberately from asking questions with reference to policy just to have a refusal by the Minister or by any of his staff on the record. I think we should refrain from even asking those questions, to the best of our ability. It may be we may not be able to draw a fine line, but there are certain questions which were asked yesterday of both the administrators and the Minister which I thought clearly had to do with reference to policy. I think we should



vote on the motion in the way of an appeal from your decision yesterday because not only was there misinterpretation of your ruling but of Mr. Macaulay's motion and the amendment; I think we should vote on that motion just to set the pattern of the type of questioning this Committee will do with reference to the administrators.

MR. JACKSON: At no time yesterday did I think Mr. Macaulay was questioning your ruling on the right to ask any members of the government department questions of policy. If it went one step beyond that, and it came down to a misinterpretation of his motion I would just add my feelings to Mr. Yaremko's that the motion in front of you, if that is the motion that has been put, be voted on so that the air is cleared and we know exactly where we are going.

MR. MACDONALD: I think Mr. Yaremko has clarified it and I just want to express my disagreement. I think this Committee should be free to ask questions of the Minister and the Minister should be free, and he has so indicated this morning, should be free to decline.

THE CHAIRMAN: I have already ruled and I am going to stick to that. If you are going to put a question which you know is a loaded question as to policy, I am not going to permit the Minister to answer.



MR. MACDONALD: Things to do with a controversial issue in terms of any potential amendments or possible amendments to the Labour Relations Act ---.

GENERAL RESPONSE: No, no, no.

THE CHAIRMAN: That is nonsense.

MR. MACDONALD: I do not think this Committee should be strictly held down. The Minister has said he wants to be a freelance.

THE CHAIRMAN: You have heard my ruling with reference to the motion made yesterday by Mr. Macaulay. Do I take it, Mr. Macaulay, you want to withdraw that motion and put this one?

MR. MACAULAY: Yes, because that is what I put yesterday.

THE CHAIRMAN: Does it meet with your approval, Mr. Macdonald?

MR. MACDONALD: It does not meet with my approval but ---.

THE CHAIRMAN: I rule Mr. Macaulay's motion of yesterday, as you understood it and as I understood it has been withdrawn and therefore rule there is no amendment.

MR. REAUME: Could I add something to that: I think if we are going to operate here every day with the thought in our minds of trying to ask questions for the purpose of putting somebody on the spot then we are just going to be going around





in circles all the time.

THE CHAIRMAN: And that is the way we are going to ruin this Committee?

MR. MACDONALD: I have no intention of asking questions with that purpose in mind.

MR. WREN: In the meantime, it is costing the people \$84 an hour, so let us get on with it.

THE CHAIRMAN: I now put Mr. Macaulay's motion, seconded by Mr. Yaremko: I move this Committee be permitted to ask questions directed towards the experience of any witness as to any matters within the terms of reference of this Committee saving any such questions may not seek to obtain from such witness what he understands to have been or now to be government policy. Are you ready for the question? All those in favour of the motion? Contrary, if any?

The motion was carried by a vote of all with the exception of Mr. Macdonald who votes in the negative.

THE CHAIRMAN: We will now deal with that portion of the summary of the Labour Relations Act having to do with unfair practices.

THE HON. MR. DALEY: At this stage could I introduce something I think is of public concern? You can rule against it immediately after I start, Mr. Chairman, if you so desire. I would like to bring this before the Committee because the



newspapers carried a story about the remuneration of the conciliation officer and the chairmen of the various boards and I would like to bring this before you because I feel that is one phase of the activities of the Department of Labour that might well come under the purview of this Committee. Now it was stated in the paper by a Mr. Gus Harris that he had submitted a bill which he considered proper of \$25 and the board paid \$65 and he has now returned his cheque for \$65.

THE CHAIRMAN: "Daley Bread".

HON. MR. DALEY: There is a very good pun in there "Our Daley Bread". I thought that was rather clever. Some time ago there was considerable discussion about a certain judge who was presumed to have overcharged for his services as chairman of the board. The Federal Government took this matter up with us and they, in their wisdom, decided the rate of pay for a chairman would be \$60 a day plus his travelling expenses. We here in Ontario maintained the amounts we were paying but there was considerable dissatisfaction and inability to get chairmen because they were paid much less than another chairman doing practically the same work so we agreed to pay the chairmen of these boards \$60 a day and this has been done for some considerable time. Board members get \$20 a day for every day of the hearing. In addition, they are allowed \$5 to meet and endeavour



to select the chairmen themselves. That is all in the statute. In addition, they are allowed \$20 a day to a maximum of two days to preserve their report. Now, I have here before me a bill submitted to my Department which is entirely in accord with the statutes: Engaged re selection of chairman \$5; Engaged at board hearing one day \$20; Engaged one day, April 20, regarding report \$20; Engaged April 22, regarding report \$20; a total of \$65. Now that is quite in accord with the statutes. We have no way of telling whether it takes an hour or two days to make the report but the statutes allow two days at \$20 a day. This bill which I have here was submitted by this man Gus Harris and signed by him for \$65 as it is in accord with the statutes.

MR. MACAULAY: You mean he submitted the bill?

HON. MR. DALEY: He submitted the bill and signed it.

MR. MACAULAY: And then when you sent him the cheque, he sent it back?

HON. MR. DALEY: And now he is going into the newspapers.

THE CHAIRMAN: Nobody pays too much attention to Harris but the Toronto Star.

HON. MR. DALEY: And above his signature are the words "I certify that the above account is correct and just in all respects". There is the



bill, there is the amount, and there is his signature.

It came to our department and we, in the normal way, proceeded to send out a cheque. He has now returned the cheque saying the hearing only lasted one day and he is only entitled to \$25 and has returned the \$65 cheque and requested that we pay him \$25.

MR. MACAULAY: Then his bill would come close to being fraud. If he is entitled to one day, why did he put in for three days?

MR. WREN: Who prepared his bill?

HON. MR. DALEY: There is his signature right on the bill which has been submitted to the accounts department; they approved it and mailed out the cheque.

MR. JACKSON: Sue him for fraud.

HON. MR. DALEY: The bills are here, all signed, all in accord with the regulations and they have been paid. Now this man chooses to behave in this way: I do not whether he thought he was going to get some cheap publicity or embarrass somebody; he makes these statements in last night's press. Yesterday morning I spent a good deal of time getting this data together because it does not come to me, it goes to the accounting department, and I made a statement to three different members of the press giving them the actual facts so they could put it in the paper but they never mentioned anything about the correction.

THE CHAIRMAN: That is the usual way.





HON. MR. DALEY: I raise this because I feel it is important. Of course there is criticism at times. Our checkers review these accounts. There is so much allowed for travel by rail; so much allowed for travel by car, 10¢ a mile, and sometimes the amount for mileage exceeds 10¢ and we check with them and change it and the only criticism we have ever got from these people is that we do not pay enough.

MR. MACAULAY: What dates are his bill?

HON. MR. DALEY: June 5th.

MR. MACAULAY: So the date of his bill precedes the date of the cheque.

HON. MR. DALEY: The cheque is June 18th.

MR. YAREMKO: Is there any indication when he may have received the cheque?

HON. MR. DALEY: It was issued June 18th.

MR. YAREMKO: And the announcement was made to the press on June 25th, yesterday.

MR. MACAULAY: You received nothing in the interval before the issuance of the cheque from Mr. Harris to point out he wanted that reduced?

HON. MR. DALEY: No, it just came out of the blue sky yesterday morning.

MR. MACAULAY: If his bill had said one day preparing the report, you would have paid him what his bill stated to be true?

HON. MR. DALEY: That is right.



MR. MACAULAY: So you relied on his bill in issuing the cheque?

HON. MR. DALEY: That is what we have to do. We cannot police these fellows to see if it takes them three days or more but they are only allowed two days at that rate.

MR. REAUME: If the man is finding fault with the fact that he is being overpaid, perhaps we ought to have him up here; he might be able to give us some help as to how we may be able to cut down these costs. Is there a possibility that we would have him up here at one of the hearings?

THE CHAIRMAN: I do not think you would be interested.

MR. YAREMKO: That question is a pertinent one; I was hoping during the course of the meetings of this Committee, that the Committee could go into the question of the staff of the Department, the conciliation section, the appointment of a chairman, remuneration, all with one thought in mind of trying to assist the Department and also in forming the statute and regulations that not only they be as good as possible but with the hopes of getting the best men in the province, both on behalf of labour and management, to carry out the Act. We can have the best Act in the world and unless we have a fully competent staff, well-paid, the purpose and the regulations of the Act will not be carried out.



THE CHAIRMAN: That is possible, and no doubt we will have representation.

HON. MR. DALEY: I thought sometime during your discussion you might discuss the question of remuneration. Now, I thought sometime during your discussion you might discuss the question of remuneration. Now, coming back to Mr. Harris, there are his facts, there is his bill, there is his statement all in accordance with the regulations.

MR. YAREMKO: And at that time, Mr. Harris might wish to appear before counsel and give his own information.

MR. MACDONALD: A moment ago there was a high-<sup>principle</sup>~~priest~~ enunciation<sup>a</sup> by Mr. Reaume that we should not ask questions to put the Minister on the spot and then within a period of ten minutes he follows up with the suggestion that someone should be brought in to be put on the spot.

MR. REAUME: No, for his advice.

MR. MACDONALD: It is precisely the same category as asking the Minister questions to get his advice as to getting this information.

MR. MORNINGSTAR: Mr. Chairman, I am pleased the Minister brought this up because I heard a lot of talk about it.

THE CHAIRMAN: I have no doubt the press will give this statement the same publicity.

We will now deal with the portion of



the summary of the Labour Relations Act having to  
do with unfair practice.

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THE CHAIRMAN: We had gone as far as page 26 on Unfair Practices, I understand, when we adjourned yesterday . . . The Secretary advises me that we had only gone so far as page 23.

MR. MACAULAY: On page 24, Mr. Chairman, there is the statement:

"The Act, by implication, makes unlawful the  
'organizational strike'. . . "

I don't want to involve us again in a discussion of policy, but if the Act only makes it "by implication" I am wondering if, later on, the Committee shouldn't consider whether something should be included in the Act so that it was more by way of explicit definition than by way of implication.

MR. FINKELMAN: The language, Mr. Chairman, is clear and has been so interpreted by the Board on all occasions.

The reason that the summary states "by implication" is that the organizational strike -- what is described as an organizational strike -- is a rather complicated proposition. If you are going to define all the circumstances in which a strike is forbidden seriatim you are going to get gaps, whereas the general provision in Section 49 is as wide as it can possibly be. Section 49(1) forbids a strike during the lifetime of an agreement. Section 49(2) spells out all of the circumstances during which a strike cannot take place. It doesn't state



specifically that the organizational strike is outlawed, but the wording is wide enough to cover that implication; and if you are going to begin to spell them out you are going to have to consider all the circumstances.

MR. MACAULAY: Are these common? Are organizational strikes as referred to here a common occurrence?

MR. FINKELMAN: We would only be aware of them in the cases where an application was brought before the Board to deal with such a situation. There may be other organizational strikes take place of which the Board is not aware.

My answer would be that the organizational strike is very rare in Ontario.

MR. MACAULAY: There are not, therefore, any applications likely to be brought before you?

MR. FINKELMAN: No. There are some instances in the building trade, but, generally speaking, the organizational strike is, and has been, a rarity in Ontario since 1943.

MR. ROWNTREE: There were two within the last ten days in Toronto, coming under this category. I must say that they appear to be in the jurisdiction of the Federal department; but they do exist.

MR. FINKELMAN: I would point out, Mr. Chairman, that the Ontario Board and this legislation is concerned only with matters which fall within the



jurisdiction of the province.

MR. MACDONALD: May I ask this question: Am I correct in defining, in my understanding, that an organizational strike is a strike which a group of workers decide to take action in an effort to get certification of a union?

MR. FINKELMAN: I would say as an alternative to certification.

MR. MACDONALD: As an alternative to certification?

MR. FINKELMAN: Yes; they would have the right to apply to the Board to be certified. Instead of taking it to court, as indicated by the legislation, they resort to direct action.

MR. MACDONALD: My point is this -- and I hope I am here dealing completely with experience and not with policy -- if you have a group of workers who proceed so far as they can in seeking certification -- say, a group of municipal employees -- and the municipal Council invokes Section 78 they have no alternative, because they are not in a position to continue bargaining under the Act, but to strike, as they have decided to do on some occasions.

MR. FINKELMAN: Yes.

MR. MACDONALD: For example, in Wallaceburg, to take one example which is history now, they proceeded so far and then Section 78 was invoked. They went on strike to try to get their employer to



bargain with them. That would be an organizational strike?

MR. FINKELMAN: That would be an organizational strike, but that is not the type of organizational strike which I had in mind. The organizational strike which I had in mind, and the organizational strike to which the legislation applies, is one where the employees are covered by the legislation. If there is an organizational strike by employees in a municipality which has passed a by-law under Section 78 there is no restriction in the Act on their going on strike.

MR. MACDONALD: Yes; I think you are correct there. My point is that as you state it it is an organizational strike beyond the ambit of the Act.

MR. FINKELMAN: Yes.

MR. MACDONALD: If you interpret the Act then it is an organizational strike by implication, which is illegal.

MR. FINKELMAN: I was referring to those cases in which the legislation applied. I think that the whole summary must be taken as relating to cases in which the legislation applies, because otherwise it would be necessary in every situation to bring that out/the Act did not apply.

MR. YAREMKO: It wouldn't be illegal, then, by virtue of the statute?

MR. MACDONALD: It isn't illegal, no.





MR. FINKELMAN: Under the Act it wouldn't be a violation of any provision of the Act. What the situation might be at common law in any dispute would depend on the common law, and I am not in a position to give you an answer on that now. It would have to be taken into account entirely differently.

Let me put it this way: A group of employees cease work in concert. Now, broadly speaking, that is a strike. If the group of employees have observed all the provisions of the Act and then go out on strike, so far as the Act is concerned they don't violate the Act. They may engage in activity which makes the strike unlawful for other reasons -- reasons which operate at common law and which have nothing whatever to do with . . .

MR. MACDONALD: I am not a lawyer . . .

MR. FINKELMAN: It might develop into a riot and so on. There may be other violations of the law. There may be violation . . .

MR. MACDONALD: As a layman, surely if they indulged in a riot that is a sort of infringement of the criminal law of the land but it has no reference to the strike by the workmen?

MR. FINKELMAN: Not in the sense that it is contrary to the Act. But I can't be more specific than that. The common law on the subject is so complicated that it would take a month to try and explain it.



MR. YAREMKO: Page 25 refers to ". . . a slowdown or other concerted activity . . .". Has there been any experience with regard to an employer who might only provide so much work for his employees? That is, although he may have a great many orders on hand he would not proceed to carry them out, but come to the employees and say: "Now, this is the amount of work that we shall produce today" in terms that there would be only three hours' or four hours' work available; and the foreman would say: "That is all the work to be done. After that, go home."

MR. FINKELMAN: I don't think I recall any case of that kind before the Board.

MR. YAREMKO: A slowdown in production. There has never been any suggestion of that?

MR. FINKELMAN: There have never been any cases of that coming before the Board.

MR. MACDONALD: In that particular connection, if a strike is defined as including cessation of work, refusal to work, and so on, or a slowdown during the course of a contract, how do you define the speed-up? Is it, then, in effect, a walk-out? If the union is, in effect, going on strike if the employees slow down during the course of a contract, how would you define an imposed speed-up by an employer during the course of a contract?

MR. FINKELMAN: In terms of the Act, I am afraid I can't answer that, Mr. Macdonald.



MR. MACDONALD: I can't either, but I am intrigued by it.

THE CHAIRMAN: Is there anything else on page 25?

MR. YAREMKO: We might ask if the Board has had any instances in respect to that? Has such a matter been brought before the Board? I don't know whether there is any procedure for the bringing of such a matter before the Board.

MR. FINKELMAN: Are you referring to the speed-up?

MR. YAREMKO: Yes.

MR. FINKELMAN: I can't see, under the legislation as it stands now, that there is provision for bringing a matter of that sort before the Board as a violation of the Act.

It may, in some cases, be a violation of a collective agreement, in which event it would be a matter for arbitration; and while I cannot put my finger on any specific case there is running through my mind the fact that I have heard where a question of speed-up has been brought before an arbiter or a board of arbitration, under the terms of a collective agreement.

MR. JACKSON: How do you define "speed-up"?

MR. MACDONALD: I am not trying to define "speed-up". I think you have got a bit of imbalance



here. If a slow-down, which is obviously a decision of the workers to work more slowly during the course of a contract, is defined as a strike, and, therefore, there are certain punishments or obligations that flow from that, it seems to me that a speed-up which is imposed by the management during the course of a contract is another matter which . . .

MR. JACKSON: What do you call a speed-up?

MR. MACDONALD: Where they are forced to work faster.

MR. JACKSON: How do you force them to work faster?

MR. MACDONALD: I know that the unions quite frequently are faced with this problem of a speed-up. Perhaps Mr. Fine would be in a better position to discuss speed-up.

MR. JACKSON: How do you make a man work faster?

MR. FINKELMAN: You can speed up the assembly line. It is carrying a number of items along at a certain speed, with workers working at the speed which is necessary to keep the line moving. If the employer, or management, speeds up the line there would be . . .

MR. JACKSON: But wouldn't the employee have fewer completed articles if it was going too fast?

MR. MACDONALD: He has more completed





articles.

MR. JACKSON: He has less completed because you can only speed it up to a certain degree.

How are you going to make a man work faster?

MR. MACDONALD: He has got to work as fast as the line is going.

MR. JACKSON: Isn't that what happens?

MR. MACDONALD: No. I think there is a certain elasticity in the production question. You can't drive a man working faster than he can normally stand over a long period. He might be able to do it for a day, or a week, or a month, but beyond that it may begin to impair his health.

But the point I am making is that you have got this imbalance in the Act. If it is a slow-down then there are certain penalties involved. There is nothing on the other side which says that if the management speeds it up that is a violation.

MR. WREN: Mr. Chairman, from the point of view of information -- and this is directed to Professor Finkelman -- do you know whether any collective bargaining agreement sets out what is a normal day's work? Let us take an assembly line as an example. Is there any collective or bargaining agreement which you know of which would set out what is believed to be a reasonable amount of work for a given day?

MR. FINKELMAN: I believe there would be



some agreements that would contain provisions of that sort. Perhaps Mr. Fine could enlarge on that.

MR. FINE: There are some agreements in the textile industry that set that out, and, similarly, in the automobile industry.

MR. WREN: Those would be instances where a slow-down or a speed-up could be more readily determined?

MR. FINE: Taking the speed-up as Mr. Macdonald was talking about it, there have been numerous instances within the terms of a contract between the parties where there has been complaint about the speed-up of a production line and so forth; and the normal procedure there is that it goes to the grievance procedure within the contract.

MR. WREN: By the terms of the agreement setting out the quantity of work they are able to determine whether a speed-up has taken place, or a slow-down.

MR. FINE: In a lot of these organizations where there is a flowing line they have time-studies. A lot of these time-studies are put into effect. If there is a claim that the time-study is too high that is going to cause arbitration.

I think the professor and I have both had experience in arbitrating such cases.

MR. MACDONALD: This has serious implications in cases where you have a seasonal industry



and where, perhaps, for eight months of the year they are actually on the job and laid off for four. They might be laid off for five as a result of speeding up the line, because in seven months they produce as much as in eight months.

The question is how do you live through the extra five months?

MR. WREN: What I am interested in is the difference between volumes of production in different kinds of industry. For example, in the automobile industry an assembly line is set up and we could assume that there are twenty men on that line. Not one of these twenty could do any more work, or produce any more output, than could the man beside him. They are all fixed to a certain output. On the other hand, like in the country where I come from, when an agreement is set up on a production basis in the woods industry a man gets so much a cord, and then it depends entirely on what the man's own personal ability is to produce.

Do you know of any disputes in the mining or the logging industries where speed-ups or slow-downs have been the cause of them?

MR. METZLER: They work at so much a cord, and the price is fixed for hauling or skidding, or what have you.

MR. WREN: What I am getting at is where you have a case going to arbitration. Say, for



example, the employer said -- and we will take a figure out of here -- say an employer offered \$8 a cord to cut wood and the union said that it should be \$10. How would you determine what would be fair and reasonable?

MR. FINE: It would be on the basis of the two bodies being brought together before a conciliation officer, and then you attempt to bring about an understanding. But if I may refer to the automobile industry, it is quite common to have production on the basis of so many jobs per hour. If there were, say, 32 men on the assembly line, in the case of a speed-up extra men would be put into the line -- say, 40; and the extra men put into the line can take care of it -- the 40 instead of the 32.

MR. WREN: So it averages back to the 32?

MR. FINE: Yes; and the line is moved up to 40; and the question then is to bring additional manpower into each additional unit.

MR. WREN: To keep to the terms of the agreement?

MR. FINE: Yes; and if the employees feel that they have not got a proper time-study -- proper manpower -- they can lodge a grievance, and they do.

MR. WREN: I am interested in the case of the automobile industry because I have had some experience in it. In a dispute over a time-study would you, as a counsellor accept the time-study





reports of the company itself, or does the Department have an independent time-study expert from whom they can get an independent report on it?

MR. FINE: I can only illustrate an occasion where I have encountered it, and that was a dispute in General Motors where it was alleged that the time-studies were improper. I was the arbitrator, but not qualified to actually say whether the time-studies were correct or incorrect. Well, at that time we brought in an independent person to make a study. He made his report, and after that we brought out our decision.

MR. WREN: You have access to, and do use, independent time-study experts if the necessity arises?

MR. FINE: Yes, we have.

MR. FINKELMAN: Could I follow that up with this: I think Mr. Macdonald may have been somewhat misled by the use of the term "slow-down" in his contrasting it with speed-up.

I don't think that the inclusion of the words "slow-down" in the term "strike" was designed to require the Board to rule in any given case whether, say, 32 or 35 cars going along an assembly line was a proper amount of work. I think what was in the minds of the authors of the legislation -- and I should point out that this Section has been copied verbatim from many other previous sections for many years back -- I think the object of the word "slow-down"



was where there were delays and substantial restriction of production. I don't think the Board would take it upon itself to determine that a slow-down of slight proportions was, or was not, a strike; but if the assembly line was working at 32 per hour and there was a sudden crack-down to 16, where it was perfectly obvious that there was a slow-down for the purpose of achieving some objective, then the Board would probably treat that as a slow-down within the definition of the term "strike". I don't think we would take upon ourselves the burden of arbitrating, in effect, the provisions of a collective agreement.

MR. MACDONALD: May I ask a further question on this point of the speed-up? It isn't so much, Mr. Fine, that the issue of speed-up arises such as in the case specified, where there is an increase from 32 to 40 and you put more men on to cope with the increase, but it is, rather, where there is an increase from 32 to 40 with the same number of men on the line.

MR. FINE: I don't recall such a case happening in the automobile industry.

MR. MACDONALD: I am not thinking particularly of the automobile industry. I suppose my example was of the automobile industry -- and perhaps wrongly -- but it is my experience that when this has been raised by unions it has been because of an increase in production with the same number of men.



MR. FINE: There have been such cases.

MR. MORNINGSTAR: Of course, there is the other point that the replacement of equipment is going to eliminate a man or two and the remainder of the crew is going to have it easier. It depends on how you look at it.

THE CHAIRMAN: Is there anything else, gentlemen, on page 25?

Page 26: We now come to the topic Remedies for Unfair Practices. That is on page 26.

MR. JACKSON: On page 27, am I correct in assuming, Mr. Chairman, that the federal labour law defining a trade union as a person is for the purpose of prosecution?

THE CHAIRMAN: As entities -- as persons?

MR. JACKSON: And this is amending it? Didn't I see that somewhere in yesterday's hearing -- that unions were to be considered as entities . . .

MR. FINKELMAN: It is on page 27 in the Summary.

MR. JACKSON: I know it is on page 27.

MR. FINKELMAN: That has been a feature of Labour Relations legislation since 1943.

MR. JACKSON: But I saw it before, where for the purpose of identifying, or for the purpose of an entity, trade unions were to be considered as persons.

MR. FINKELMAN: For the purposes of the



Act and all proceedings under the Act, whether prosecution or otherwise -- that was introduced in war-time and has been continued since then.

MR. JACKSON: Where they were to be considered as persons -- as an entity? Does this change it?

MR. FINKELMAN: No.

MR. JACKSON: I am not clear whether this enlarges it or not. Does it?

MR. FINKELMAN: Perhaps to some extent it enlarges it by way of clarification, but there is no essential change in the provisions of the Ontario Act in that respect.

MR. JACKSON: How do you prosecute a union?

MR. FINKELMAN: You prosecute the union.

MR. JACKSON: In the name of the union?

MR. FINKELMAN: Yes.

MR. WREN: On page 28 there is a statement that "the function of the conciliation officer is to inquire into the complaint and endeavour to effect a settlement of the matter complained of . . .". Then there is a sentence in between, and then it goes on to say: "If the conciliation officer is unable to effect a settlement, the Minister may appoint a commissioner with wide powers of inquiry . . .".

My question there is: Would it not speed up the process and, perhaps, effect a better result, to take the second step first? In effect, to give





the conciliation officer wide powers of inquiry in the first instance?

MR. FINE: Well, I think the conciliation officer would be handicapped if he was given power to determine the matter and make a report to the Minister on file. It is for the Commissioner to inquire into the circumstances and report his findings to the Minister.

MR. WREN: If he was given some wider powers -- this is a proper question -- do you not think it might speed up the settlement of a dispute -- in effect, eliminate a step; because if the conciliation officer is unable to effect a settlement then, the Minister must appoint a commissioner, and that takes time.

MR. METZLER: I think, Mr. Wren, you may be confusing two situations. This is not in respect to conciliation in an industrial dispute.

Most inquiries are involved with the dismissal of an employee during an organizational strike of a trade union, or immediately following certification where there are no provisions for arbitration or for the protection of employees, and so either he or the trade union his behalf, will appeal to the Minister, stating that So-and-So has been dismissed, and alleging that the dismissal was contrary to the Labour Relations Act.

The reason that the conciliation officer



is the first step is because of the fact that very often it involves the examining of the facts and the making of a report and the screening out of cases where, in his own estimate of the situation, the allegation is not substantiated; and if he reports that he cannot associate the alleged dismissal with a breach of the legislation, then that is notified to the parties, and that is the end of the thing.

On the other hand, if he feels that there is a likelihood that maybe the Act has been breached he will recommend the appointment of a commissioner; but, in any event, he does a type of work that he would ordinarily do in those circumstances, namely, to try to get the man back to work, no matter what the situation was; because it is in our interests as a Department to see that people are employed; and he often does that. It may be that the case would fall to the ground, but he is able to arrange for the employer to take the man back.

If you start with the commissioner then you are in this situation, that that is a formal proceeding, whether the commissioner is a judge or a magistrate or somebody that is skilled in going into matters and investigating them. They hold a formal hearing and the parties are brought before that commissioner; and there is power to subpoena witnesses. The commissioner has all the power of a chairman of the Board of Conciliation. They are



down to the formal stage then.

That is the type of work usually done by the conciliation officer and the commissioner under the provisions of the legislation.

THE CHAIRMAN: Is there anything else on page 28? Page 29?

MR. WREN: Still on page 28, it says: "The Board has no authority to issue 'cease and desist' or 'compliance' orders."

Is that because it is only the function of the court of law to issue such an order?

MR. FINKELMAN: No; because that is the structure of the legislation.

MR. WREN: It is just not included in the Act?

MR. FINKELMAN: It is just not included in the Act.

MR. WREN: Yes.

MR. ROWNTREE: Is there any information about the number of prosecutions by unions against management and by management against unions, in which permission has been granted by the Department?

THE CHAIRMAN: I think we discussed that yesterday.

MR. FINKELMAN: There are very, very few cases that come up for hearing -- very few in which consent has been given, and fewer in which any attempt has been made to carry them to the Courts.



MR. YAREMKO: Getting back to the same question that was asked earlier, that the Board "has no authority to issue 'cease and desist' or 'compliance' orders . . ." does that indicate that there are other jurisdictions in which there are statutory powers along those lines?

MR. FINKELMAN: Yes. There is jurisdiction in the United States under the Taft-Hartley Act; there is jurisdiction in Saskatchewan; there is some jurisdiction in British Columbia.

MR. YAREMKO: We will have an opportunity of discussing this type of thing when we are discussing the comparisons?

MR. FINKELMAN: Yes; and the vice-chairman of the Board will be preparing a report on the workings of the legislation in those jurisdictions, which may be available for the members of the Committee in the fall.

MR. WREN: Is there any machinery at all in the Act in cases such as those mentioned in pages 28 and 29, for redress of a grievance, or an injured party? Is there anything in the Act? Supposing, for example, it were found that one party or the other has become an injured party as a result of what has happened . . .

MR. FINKELMAN: You mean if an employee has been improperly discharged?

MR. WREN: Yes.





MR. FINKELMAN: Yes; the commissioner appointed to inquire into the matter may recommend that the man be reinstated with, or without, back pay; and that is frequently done.

MR. WREN: And has he any appeal from the decision or finding of the commissioner?

MR. FINKELMAN: No; the commissioner's ruling is final.

MR. METZLER: A commissioner makes a recommendation to the Minister and the Minister makes an order based on these recommendations.

MR. WREN: I see. Does the man have any right of appeal -- a hearing wouldn't be granted, but would the man still have a right of appeal when the Minister got those findings?

MR. FINKELMAN: No.

MR. METZLER: No; it is conclusive.

THE CHAIRMAN: Is there anything else on that page?

MR. JACKSON: On page 29 it is stated: ". . . the Board may declare that the strike or lock-out, as the case may be, is unlawful . . .". I wonder if we could have an example of what happens -- perhaps from the experience that you have had -- after you have done that. Would you give an example? You declare the strike unlawful. Now, will you give us an example of what happens?

MR. FINKELMAN: In the vast majority of



cases the employees return to work.

MR. JACKSON: The employer opens the doors.

THE CHAIRMAN: In the case of the lockout the employer opens his place of business again.

MR. JACKSON: Well, the employer will open his place of business again. In the other cases what happens?

MR. FINKELMAN: There is no remedy by way of application for leave to prosecute, but in the vast majority of cases in which there has been an application for a declaration that a strike is unlawful, and where the Board has found the strike to be unlawful, the employees have gone back to work. There are a very few examples to the contrary, but they are isolated instances, and they depend on circumstances which are very novel and unique, where I do not think that anyone could have got the people back to work.

There are two cases that come to mind where the unions and the companies were really taking part of the battle that was going on in the unions in connection with the big steel strike. Outside of those cases I think in every solitary case where declaration has been issued the employees have gone back to work -- contrary to the opinion that is entertained in some quarters, that this declaration is absolutely meaningless.

The fact of the matter is that the unions don't like a declaration, and I can produce evidence



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to this Committee of cases where we have had a wire from the union -- I can think of one in particular -- where we declared a strike unlawful on a Friday and on the Saturday we received a wire from the union that the employees had been ordered back to work as a result of our declaration.

MR. JACKSON: To take that a little further, after you have declared it unlawful, and assuming they have gone back to work, is there any significance in it -- I suppose there would be ... I wondered if that tended to weaken the union? Once you have declared it unlawful, does it have the tendency to weaken the union, or, conversely, would it have a tendency to weaken the employer if he was the guilty man? Does it weaken them in their relationship with one another?

MR. FINKELMAN: I can't tell you whether it weakens the one with the other as the case may be, but since, in strikes and lock-outs, public opinion is the major factor, the declaration certainly has a very profound effect on public opinion.

MR. JACKSON: I was thinking of why people say, or some people say, that the boards declaring a strike unlawful -- that nobody pays much attention to it. You say that that has happened.

MR. FINKELMAN: There is one newspaper in particular that takes that position, but I can assure you that I can provide for you the record which shows



settlements that have been effected very soon after the declaration.

People, generally speaking, are law-abiding. The fact that the strike has been declared unlawful gives a great impetus to the union to call off a strike, or, in some cases where the union has not been responsible for calling the strike but it is a wild-cat, it induces the employees to go back to work, because it is a weapon that they use on undisciplined employees.

MR. WREN: To take the case where a lock-out has taken place and the board has decided there has been a lock-out and leave to prosecute has been granted, the courts impose a maximum fine of \$1,000 on the employer for engaging in the lock-out ...

MR. FINKELMAN: The maximum fine is \$1,000 a day.

MR. WREN: \$1,000 a day -- in fact, I think the court has power to order the man to reopen the plant---?

MR. FINKELMAN: No; it can just impose the fine as long as the plant is closed.

THE CHAIRMAN: They can impose that.

MR. WREN: Yes, that is the maximum.

THE CHAIRMAN: Is there anything else under this heading?

Then, we will pass to the topic "Miscellaneous Provisions" on page 29.





MR. MACDONALD: In this general section, on page 30, I was interested in this comment:

"An agreement between an employee and a trade union which discriminates against any person because of his race or creed is deemed not to be a collective agreement for the purposes of the Act ---" Have there been collective agreements concerning which representations have been made in these respects and they have been washed out?

MR. FINKELMAN: I can't recall any case where that has been the situation.

The section was retained as a parallel to the Fair Employment Practices Act which was an Act about the same time.

MR. MACDONALD: So that it has been effective in precluding that sort of thing arising.

MR. WREN: There is one area of discrimination -- at least I term it an area of discrimination -- which I want to say a brief word on, and I think this Committee should give some attention to it later on. I refer to the discrimination against people over 45 years of age obtaining employment. Sometimes I think, in the light of science today, that a man's abilities to perform a certain job should be determined solely by his ability to perform this particular job rather than by ascertaining his age and then deciding against him when his age is revealed.



THE CHAIRMAN: There is nothing in the Labour Relations Act about that.

MR. WREN: I know; but I think it is a very vicious form of discrimination.

MR. SPOONER: Before you leave page 29, in the first paragraph, it states:

"Everybody to a collective agreement is required  
"to file with the Board a signed copy of the  
"collective agreement. The Board may direct  
"any trade union, council of trade unions, or  
"employers' organization to file with the board  
"a copy of its constitution..."

Is that general practice or is it just for a particular purpose that you might require that it be filed?

MR. FINKELMAN: We have never had to invoke the section directly.

What we do is that, periodically, we write to everyone of the International Unions and ask them to deposit with us a copy of their latest constitution for our records, and we have a pretty complete file of all the unions that operate in Ontario. From time to time we have asked the unions to file with us the statement as to the names and addresses of their officers, but so far as I can recall we haven't asked them to verify that by statutory declaration.

In some specific case before the board we



may want information and we ask for that information and it is always supplied. There has been no case where it has been refused.

MR. WREN: Is there any authority in the Act who require additional information if it were deemed necessary, such as a financial statement, or..

MR. FINKELMAN: There is no provision requiring financial statements.

MR. YAREMKO. On page 31, subsection (f), the board is empowered "to determine the following matters ...". Has the board ever been asked to determine any matter on which you have indicated that you have no jurisdiction to determine that matter?

MR. FINKELMAN: I don't quite understand the question.

MR. YAREMKO: This may be a broad question, but section (f) mentions various things that the board has to determine, such as whether a person is an employer or an employee. They are all spelled out there. My question is: Has the Board ever been confronted with the situation where they have been asked to determine any matter and then discover that they were without jurisdiction to determine that matter because it is not spelled out in the Act? Are there any holes in those terms -- any gaps?

MR. MACAULAY: Your question was dealing with gaps?



MR. YAREMKO: Have you been asked to determine any matter and had to say: "We have no jurisdiction"?

MR. FINKELMAN: If I may, I will answer your question this way, that as soon as we discover holes we try to plug them up by recommending that legislation be passed to cover that; and if you look at your copy of the Act, you will find that under section 68, we have had added to the Act a clause (aa) to strengthen the power of the board.

At the moment I can think of no other instances where we lack jurisdiction. There may be as time goes on -- we may come up against cases where we find that we lack jurisdiction -- and as those cases occur we will certainly request that the Minister take the necessary steps to clothe us with what we regard is the necessary authority.

There was one case in 1954, involving the Swift (Canada) Company where we were asked to make a finding on a certain point and the board refused to make a finding. The matter at that time was before the court, and I think what the union was seeking to do was to get a determination of the board on this point as a mate with the court and, perhaps, in that way it might preclude the court from reaching a decision. The matter was not one which arose in any proceedings before us other than a straight





application for the determination of this particular question, and we refused -- this was a unanimous decision of the board -- we refused to decide that question.

I can refer you to the decision in the Swift (Canada) Company case in Canadian Labour Law Reports, paragraph 17085. I have a copy here and I will be glad to ...

MR. MACAULAY: I ought to ask this question. You said that if you find any holes you ask the Minister to plug them. I want to ask: Have you ever asked for any plugs you weren't given? Yesterday you said something and I had to ask the Chairman, who indicated to me what it was -- did you say you had, or had not, jurisdiction in some questions -- I just forget what it was -- and the Chairman came back and he said that you said you didn't have jurisdiction. Do you remember what it was, Mr. Chairman?

THE CHAIRMAN: I remember, but I don't remember what it was about.

MR. MACAULAY: I asked a question as to whether you had jurisdiction in some matter and you replied, and I hadn't heard it. I was just wondering whether that came under this heading?

You don't offhand recall?

I will find it and I will ask you about it in the fall.



THE CHAIRMAN: Is there anything else on this topic of "The Labour Relations Board"? If not, we will go to page 32 -- "Privative Clauses".

MR. WREN: In connection with this, there is something I don't know about. Can you tell me, as a barrister, what the last two lines mean?

THE CHAIRMAN: Where?

MR. WREN: On page 32. It might as well be Chinese so far as I am concerned.

MR. MACAULAY: There are different things you can do in the law.

MR. JACKSON: You had better go to Osgoode Hall and ask!

MR. WREN: You don't know either?

THE CHAIRMAN: Professor Finkelman says he will attempt to do so.

MR. MACAULAY: On page 33, the last sentence: "Any order the Minister may issue calling upon any Minister to carry into effect the recommendation of a commissioner is final..."

You have already indicated, I think, Mr. Finkelman, that, in the main, you review your own orders that you have taken? In any event, you said that there was a case a matter of some years ago, and I took it from what you said that you considered you might review your decision of two years ago and you would issue a judgment; but, in any event, it led me



to believe that you took the position that you weren't bound by your own earlier decisions.

MR. FINKELMAN: That is right. I think you may be confusing two separate points.

First of all, the board does not consider itself bound by its own prior decisions. The legal principle of stare decisis does not apply to the Board. No administrative tribunal regards itself as bound by the principle of stare decisis, so that past mistakes wouldn't bind us to continue and perpetuate these mistakes in the future.

MR. MACAULAY: But you try to be consistent.

MR. FINKELMAN: In court you have a higher tribunal which gives you a fresh start. On the Board, we haven't. However, as any group of men working together -- in the way in which the Board does -- must do we try to be consistent, and I think our record of consistency -- I say this with all due modesty -- has been very good. In fact, the members of the board, in their own thinking, apply the rule of stare decisis in a way which is pretty rigid.

However, we have no hesitation in throwing out an old principle if we come to the conclusion that the principle is unsound; and it was on that ground that I indicated to you yesterday that, on the question of whether the same union could



represent office workers and production workers, we had changed our mind and we came to a different conclusion.

Apart from that altogether, in a specific case there is a power in the Board to "reconsider any decision, order, direction, declaration or ruling made by it and vary or revoke any such decision, order, direction, declaration or ruling."

MR. MACAULAY: What section is that?

MR. FINKELMAN: Section 68, subsection 1.

Now, to give you an illustration, there was a case that came before us this morning just before I came down. It was a case involving the Dominion Glass Company at Wallaceburg. The operating engineers applied for certification of the stationary engineers in the power house. The company was represented at the hearing. The union which represents the other production workers was also present. Representations were made as to the composition of the bargaining unit, and on the basis of the information we had before us at that time, we came to the conclusion that the bargaining unit should be described as "all stationary engineers in the power house."

When the parties got together, they came to the conclusion that the compressor room and the power house were really one unit, that the people in both places were interchangeable to such a





degree that it ought to constitute one unit. We received a letter from the company yesterday in which they told us they felt the unit should be changed and that the two unions involved would agree to that. This morning we received letters from the two unions saying they did agree. In those circumstances, then, this morning, we had a meeting of the board -- immediately prior to my coming down here -- and we agreed to revoke our previous decision defining the bargaining unit, and change it.

To give you another illustration, there is the sugar factory that is being built on the water front. Our normal bargaining unit was an "all-employees unit". The Teamsters' Union applied for the employees of the warehouse there, and in the description the warehouse had such and such a location. Now, we don't like to confine it in that way, for reasons you yourself discussed the other day. We struck out the word "warehouse" when we came to decide the case and we said generally "all employees."

The company came back in about a week and said: 'Now, this may cause us infinite harm, because the Teamster's are really interested only in the warehouse as it operates up to the present time. We propose to build onto it in the very near future a large refining plant which will employ several hundred people. If the certificate is issued in the terms of "all employees" the Teamsters will have



bargaining rights over all employees of the refinery as well. This letter went out to the Teamster's Union for their comments and they didn't raise any objection. They indicated that they saw the merit in the company's suggestion, and we revoked our decision and changed it.

It may be that we may overlook something in a case, and if we do overlook something in a case we will revoke our decision when it is brought to our attention, or we will modify it, or vary it, or reform it, as necessary.

MR. MACAULAY: Then, that point reflects on the last sentence on page 33, that the Minister's order is final.

MR. METZLER: That had to do with the order after the recommendation of the commissioner, Mr. Macaulay.

MR. MACAULAY: But I am trying to analogize this. Can the Minister not review his own order?

MR. YAREMKO: We were dealing with the relationship between the board and the courts.

MR. FINKELMAN: Yes; but in answer to Mr. Macaulay, there is another consideration he has overlooked. The Minister has no discretion to review the decision of a commissioner appointed under section 58 of the Act.

If you will look at section 58, you will note, in subsection 4,



After a commissioner has made his recommendation, the Minister may direct him to clarify or amplify any of his recommendations and they shall not be deemed to have been received by the Minister until they have been so clarified or amplified." So that there is power of review in the Minister in that narrow sense.

MR. MACAULAY: If any new circumstance turned up, which would involve the Commissioner's recommendations, it can't be ordered if...?

MR. FINKELMAN: I am afraid that is something you will have to ask Mr. Metzler about.

MR. METZLER: I don't think so. Once he has got the Commissioner's report and has read it and it looks to cover the reference that was given to him, and he makes a finding and recommendation, that is it so far as that is concerned.

MR. MACAULAY: But the Professor has pointed out gets the opportunity of revoking its decisions. I am wondering why the Commissioner can't do likewise in the case of circumstances arising which were not known to him when he made the order?

MR. METZLER: The only thing that might happen is that the Minister might ask him to clarify or amplify his recommendations -- draw to his attention whatever representations were made.

For instance, I will give you a situation which occurred. This might give you an idea of what



can transpire. We had a situation on our files where a conciliation officer investigated an alleged dismissal in a mine. We appointed a judge to investigate it. He came down with a report. Our standard practice is to send the recommendations to the parties, and when we issue an order, we say to the employer: "We note that the Commissioner recommends that certain things be done. We request that you implement the recommendations of the Commissioner." In most cases they do. The employer in this particular instance said: "Well, there is a bit of a question cropped up here, because prior to the dismissal of this employee he had applied to me and asked to be given two weeks leave of absence without pay so that he could attend to certain things, and I had agreed. So do I have to pay him, as part of the dismissal situation, for those two weeks that I already agreed to allow him off?" I will be frank with you. I said I wasn't going to put a ruling on the thing, so I remitted it to the Commissioner; and I sent a copy of that letter to the trade union, and I said: "Will you please state what your position is?" When I got that back, I remitted it to the Commissioner, and he said: "I think you will have to look into this thing and decide whether or not you are going to reform, or amplify, or clarify, the decision."

MR. MACAULAY: It has, then, the saving grace also, in practice, of meeting a situation





which was not necessarily anticipated by the Act.

MR. METZLER: Yes. The thing is that, as a matter of practical application, we ran into trouble some years ago, when we first used this procedure, in which the employer would say: 'Why don't you let me know the basis on which I have got to do these things? So as a matter of direction and practical application we decided among ourselves that the simplest way would be to let the people know exactly what the commissioner said, and said: "Will you be good enough to implement the terms of these recommendations immediately?"

MR. FINKELMAN: For the record, might I just correct a statement made by Mr. Macaulay? Mr. Macaulay said that there would be power in the board to review a case on the basis of facts that occurred after the hearing.

MR. MACAULAY: No. I meant facts that were not known at the time the hearing was held and which turned up afterwards.

MR. FINKELMAN: I would like to make it clear that we proceed as a court of law in which there is a cut-off for evidence, and parties can't withhold evidence and then wait till the decision comes down and then ask the board to change its decision on the basis of evidence which it could have produced. If it is evidence that could not have been produced previously, that is another story.

In the example I gave you, in the case of



both parties there were facts that had been brought to the attention of the board and perhaps not stressed sufficiently to make a point of them.

MR. WREN: Before we adjourn, could I ask Mr. Metzler a question? The composition of the Board is five members, is it not?

MR. METZLER: Yes.

MR. WREN: I can understand how the Chairman is appointed. The two labour representatives on the Board -- are they nominated by a trade union group?

MR. METZLER: Prior to the merger of the two big congresses of labour, we had two representatives, one, you could say, coming from the former Canadian Congress of Labour and the other from the former Trades and Labour Congress of Canada.

MR. WREN: You accept the nominations of the trade unions?

MR. METZLER: I wouldn't want to say absolutely what would transpire, but the Minister, as a matter of practice, if there is a vacancy on the board asks for nominations.

MR. WREN: And the same thing with the employer groups?

MR. METZLER: Yes. As a matter of fact, we are losing one of our members of the board at the end of July, Mr. Ferguson, and we have asked them to recommend someone.

THE CHAIRMAN: Is there anything further?



MR. MACDONALD: There is one question on the matter of statistics. Mr. Fine gave us some yesterday with regard to the record of conciliation officers, and if I understand it is going to be available this fall. I wonder if Mr. Metzler could give us similar statistics from the conciliation board level?

MR. METZLER: I will try to parallel what Mr. Fine is doing.

MR. MACDONALD: Particularly with regard to time. I was very interested in the figures that Mr. Fine gave us, as I recall, that 36 per cent. of the cases were settled within 14 days and 56 per cent. were settled within three weeks.

MR. FINE: I said that in 36 per cent. of cases meetings were held within 14 days, and in 56 per cent. of cases within a period of three weeks.

MR. MACDONALD: My interest with regard to this particular question is in the amount of time required. We have got some information at the conciliation-officers stage. I think it would be useful to have the comparable information at the conciliation board stage.

MR. METZLER: I will file for your consideration statistics that will parallel Mr. Fine's -- the number of boards and the dispositions.

MR. MACAULAY: And the times -- how soon they met.

MR. METZLER: We can see what we can do



with that. You must remember that it will require an examination file by file to determine.

MR. MACAULAY: At the same time, in order to deal with criticism of the amount of time involved one must have some indication what the rest is.

MR. METZLER: Yes; I think we can do that for you. We will be pleased to.

Mr. Fine agreed to produce them for a year?

MR. FINE: For the past year.

MR. METZLER: Well, then, I will complement that aspect of it.

MR. WREN: Because, by the fall, the Minister may like the Committee to do something about fees and conciliation board, etc., I just want to get my mind clear on chairmen's fees. I believe someone said the Chairman of the Board gets \$60 a day plus transportation?

MR. METZLER: The Chairman is given what you might term a living allowance of \$60, out of which he pays all his costs with the exception of taxi cabs and the railway fare. If he uses his own vehicle to go to a sitting of the board, he is paid 10¢ a mile.

MR. WREN: But my question is this: Does the same \$60 basic fee apply to one who is a judge and one who is not a judge?

MR. METZLER: Yes.

MR. WREN: What I am getting at is -- and correct if I am wrong --- that I understand that a





judge has a sustaining salary to start with from the Federal Government, I believe; so that a layman accepting the same responsibility would receive the same fee?

MR. METZLER: Yes; we have to alter the legislation. The judges are remunerated under the Extra-Judicial Remuneration Act. We shall change the regulations under the Labour Relations Act to put the lay chairman on the same basis as the judge.

MR. WREN: Well, I just want to be clear in my own mind to decide whether there is any element of unfairness, that one person who gets a substantial salary should get the same remuneration as one who does not get the same salary.

THE CHAIRMAN: Is there anything, gentlemen?

MR. SPOONER: I notice that in this list of organizations that have already indicated that they wish to appear before the Committee, there is not included the name of the Sawmillers' Union. I had an interview with the general secretary of that union and I am led to believe that it is the intention of that union to make representations before the Committee..

THE CHAIRMAN: Anyone who indicates their intention to do so before the 31st of August can appear before the Committee, and I believe even after that date we can hear anybody else that wants to be heard.

It would appear that we have concluded the business of this session, and I would just ask you to do this as quickly as you can -- today if possible --



and that is to prepare your expense accounts and have them submitted so they can be approved by myself as chairman before I leave.

Now, we have about four of these books "Government by Committee : Some of the members of the Committee have already received one. We have only received seven where twelve were ordered. The other four will be coming, but they are coming from England and we will probably not have them before the fall sittings. I think the secretary should make a note of each one who hasn't received a copy up to now. We still have these other four to distribute, so if any of you think you need one, or will want to have one, you are free to take them so far as they go.

MR. MACDONALD: I would like to have one, if I might, for summer perusal.

MR. WREN: Yes; I would like one.

THE CHAIRMAN: Then, any of the Committee who have not received a copy of this will receive it during the course of the summer.

Well, gentlemen, the next thing to decide is the date when the Committee will be reconvened, and I think it is the thinking of all of us that there should be no further sittings until the month of September.

Labour Day would appear to come on the 2nd of September, and as these briefs are to be in our hands as soon as we can receive them but not later than the 31st of August, I would suggest -- it is only



my own personal opinion on this matter -- that our first sitting should take place not earlier than Monday, the 23rd of September, so that we will have an opportunity to study these briefs.

MR. WREN: Are these briefs going to be mailed to us as received?

THE CHAIRMAN: To the secretary.

MR. WREN: As received?

THE CHAIRMAN: It can be, if you wish, as received.

There is another topic that has just arisen. The officials of the department will have this statistical information that we shall require, or as much of it as they can possibly have at that time, and if it is your desire that they attend our hearings, then we are free to call on them at that time.

Now, then, does anybody else have any opening date in mind?

MR. MACAULAY: May I suggest that, perhaps, we could get the figures from these gentlemen and have some discussion on them before we started hearing the briefs? Would that be possible the first day, perhaps?

THE CHAIRMAN: Yes. That is, the first day would be devoted to consideration of the statistics that are supplied to us by the department?

MR. MACAULAY: Yes.

THE CHAIRMAN: We will be receiving our copies of the transcript today before the sitting,



of course.

MR. MACDONALD: Am I also correct that we will have the comparative study of the various jurisdictions before we hear briefs?

THE CHAIRMAN: Yes. So that there will be no briefs heard before the 24th of September.

MR. ROWNTREE: Would you like me to move a motion to that effect?

MR. FINFELMAN: With regard to the question as to whether the comparative analysis of legislation would be available, this analysis will cover the common-law jurisdictions of Canada. Quebec may have to be treated separately, and we may not be prepared to deal with legislation across the border; but so far as the common-law jurisdictions of Canada are concerned that matter should be available within a month.

MR. METZLER: I will supply the secretary with copies of it; and, of course, I can send it to individual members once it is available.

THE CHAIRMAN: Then, if there is no objection to the date that I have mentioned, namely, Monday the 23rd of September at the hour of 11 o'clock in the forenoon, I declare this session of the Committee adjourned till that time.

MR. PERKINS: Does the Committee wish to make any recommendation as to the appearances of these submissions? Have you any ideas as to who you want to appear first, or second?

THE CHAIRMAN: I don't think so.





MR. MACAULAY: I thought you said the order in which the briefs came in.

THE CHAIRMAN: Yes; the order in which the briefs come in.

---Proceedings adjourned until Monday, the 23rd of September, 1957, at 11 A.M.

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